Public Utilities

FORTNIGHTLY

August 28, 1941

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PUBLISHERS

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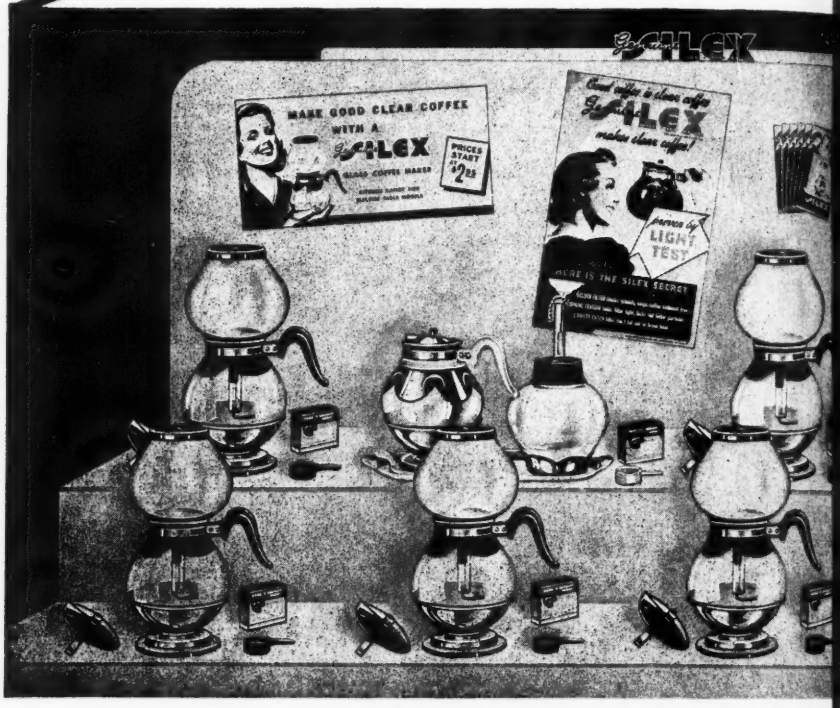

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4	BWE8-B — 8 cup Bretton Electric Table Model, Black Trim, @ $5.95	$23.8
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	TOTAL LIST VALUE	$37.9

SPECIAL LIST $31.75 DEALER COST $19.0

PROFIT $18.15 or 48.8%

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PROGRESSIVE and enlightened gas companies recognize that, in addition to load-building, the customer must be satisfied that his fuel is *utilized* without waste. There may be among *your own customers* many instances, especially in the case of gas-burning appliances which are manually controlled, where fuel economies could be effected by gas pressure regulators. If you have complaints on fuel bills, why not have your service men, on these calls, take along a Barber Regulator and explain to your customers the savings possible with pressure regulators? Barber will gladly supply you with educational folders for such calls.

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Burners For Warm Air Furnaces, Steam and Hot Water Boilers and Gas Appliances

Editor—HENRY C. SPURR
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Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXVIII *August 28, 1941* NUMBER 5

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THE National Association of Railroad and Utilities Commissioners assembled this month (August 26th-29th) for their annual national convention at St. Paul, Minnesota. It would be safe to say that never since the hectic days of 1916 and 1917 have the state commissioners been confronted with so many different regulatory problems.

IN the topsy-turvy world which the emergency has thrust upon America, probably no development presents such a bewildering variation of results for utilities as the priority program. Already gas, electric, telephone, water, and transport utilities have felt the pinch brought about by the scarcity of certain materials. In the case of the electric industry there have been local occasions for rationing the power supply to some extent, in the recently drought-stricken southeastern area.

PRIORITIES and rationing have brought in their wake many cross-currents for the utilities. The gas industry is being called upon to fill in spots previously occupied by electricity and competitive fuels. On the other hand, the shutdown of the silk and hosiery mills during the past fortnight has released more than 200,000 kilowatts of generating capacity. That is enough power to run twenty plants such as the huge Wright Airplane Engine plant recently completed at Chicago—the largest in the world.

HERBERT COREY

The day the bugle blows the war call, the wires will hum.

(SEE PAGE 270)

OSWALD RYAN

Are we planning or drifting towards a policy of due process in regulatory proceedings?

(SEE PAGE 259)

AND we are told that the silk shutdown is a typical example of what is likely to happen in many other lines of normal industrial endeavor. The fact that certain civilian enterprises must be suspended or curtailed will ease the load on the power industry, already greatly burdened by the staggering and ever-increasing demands of defense activities.

BUT then, consider this angle: The eastern fuel shortage may indirectly contribute to further demands on power companies. This is seen in preliminary estimates of urban transit officials who expect that the daily passenger haul will sharply increase when automobile gasoline rationing goes into effect. An increase in transit passengers has already resulted from the gasoline "curfew" in cities such as Washington, D. C., where the number of workers who ordinarily use private automobiles is exceptionally high.

THE transit industry generally welcomes the prospective increase in urban transportation business, provided it does not cause such strain on existing facilities as to result in unprofitable replacements or repairs. The Virginia Electric

& Power Company of Norfolk, Virginia, recently experimented to determine how much power could be saved in street car operations by running cars at half speed.

FEAR that fuel shortage may make it difficult for small concerns to obtain dependable supplies is also credited with recent shifts from private generation to central station service. During the last few months, seven commercial establishments in New York city have arranged to shut down their plants and substitute central station service. (See page 312.)

AND so it goes. One industry's priority restriction may be another industry's opportunity. Asked whether the sudden surge of business for the street cars and busses that may result from gasoline rationing would require the purchase of new equipment for an unprofitably short period, a transit official in an eastern city said: "We probably couldn't get the new equipment in time to do us any good, even if we could afford to buy it. But the mere fact that a large portion of the automobile-riding public turns to street cars would solve the problem indirectly by improving operating traffic conditions. There wouldn't be so many cars running or parked on the streets and our present equipment could probably handle a proportionately greater load."

THE communications industries have special problems arising out of the emergency. Censorship, the safeguarding of the nation's vital communication nerve centers from sabotage or espionage, the coördination of civilian and defense usage of the nation's communication carriers—these are a few of the broader problems which the Federal Communications Commission had in mind when it took the initiative in creating the Defense Communications Board.

IN this issue, HERBERT COREY, Washington author and newspaper correspondent, gives us a peek behind the scenes at what may be in store for the communications industry when and if a state of war actually comes to pass for this nation.

THE opening article in this issue is another one which ought to interest the state and Federal commissioners. It is an analysis of what is wrong with our commission laws. It was written by someone who certainly ought to know. The author is OSWALD RYAN, formerly general counsel for the Federal Power Commission, who is now a member of the Civil Aeronautics Board.

BORN in Indiana, MR. RYAN received his education at Butler College and Harvard University. He began the practice of law in his hometown of Anderson, Indiana, in 1926 and after some political experience was appointed to his former post with the FPC in 1932. He was named to the Civil Aeronautics Authority in 1938.

H. W. BLALOCK

Putting the sleeping Arkansas watershed to work is a national responsibility.

(SEE PAGE 279)

WE continue in this issue the series of articles on the Arkansas Valley Authority by H. W. BLALOCK, formerly a member of the Arkansas Corporation Commission and now a power consultant with the FPC. The second instalment of MR. BLALOCK's 3-part series begins on page 279.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Federal Power Commission has made use of its emergency powers under the Federal Power Act to make recommendations for curtailment of the use of electric energy in the southeastern states because of the existence of a national emergency. (See page 129.)

AN application by a public utility company for authority to include tax clauses in rules and regulations covering the sale of gas was heard by the Michigan commission, and the question whether gas bills should be increased to offset any new or increased specific tax or excise imposed by any governmental authority upon the company's production, transmission, or sale of gas was considered. (See page 130.)

THE next number of this magazine will be out September 11th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129–192, from 93 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

R. E. FISHER
Vice president, Pacific Gas and Electric Company.

"Our industry at this time should ask 'what's the job' and not 'what's the use.'"

HENRY A. WALLACE
Vice President.

"We who do the talking need to take pains to understand the democracy that we are defending."

JOHN E. RANKIN
U. S. Representative from Mississippi.

"I want REA to go as far with the rural power lines as the Federal government does with the draft."

H. W. BASHORE
Acting Commissioner of Reclamation.

"It has been exceedingly difficult to make forecasts of demands [for electric power] which stand up for as long as a month."

SIDNEY HILLMAN
Associate director, Office of Production Management.

"We have got today a spirit of full coöperation. With coöperation we can outdo and outbuild any totalitarian system based on coercion."

ANDREW J. CAVANAUGH
Assistant director, Registration Division, Securities and Exchange Commission.

". . . one of the reasons why accountancy has not more nearly fulfilled its possibilities is the tendency to rely on precedent rather than on the scientific method."

CARROLL B. HUNTRESS
Vice president, Republic Coal & Coke Co.

"There are no present indications of any developments that would make future hydroelectric installations more attractive economically than those already in existence. If anything, the natural trend will be toward less economical installations."

DONALD M. NELSON
Director, Division of Purchases, Office of Production Management.

"Not only must we forget about that pleasant old slogan, 'Business as usual'; if we are going to be safe in a world which grows more perilous every day, we must see to it that there is useful work for every man and every machine in the country."

E. E. Cox
U. S. Representative from Georgia.

"Labor has no right to demand that others protect it from potential foreign aggression. It is still less entitled to protection when by its own subversiveness it destroys the efficiency of national defense and itself prevents the production of defense material."

D. C. PRINCE
Manager, Commercial Engineering Department, General Electric Company.

"We are fortunate, in a way, in having the two catastrophies [World War No. I and present emergency] within a single business lifetime. Many of us have had an intimate enough contact with the former period so that we should be able to avoid falling into the same traps a second time."

FRANKLIN DELANO ROOSEVELT

"The nation expects our defense industries to continue operation without interruption by strikes or lockouts. It expects and insists that management and workers will reconcile their differences by voluntary or legal means, to continue to produce the supplies that are so sorely needed."

MORRIS LLEWELLYN COOKE
Chairman, Shipbuilding Stabilization Committee, Labor Division, Office of Production Management.

"While many believe that heightened coöperation between men and management at the machine, within the four walls of the workshop, and throughout the nation, will bring into focus democracy in action, yet they are apprehensive lest any experiment with new arrangements may lead to some foreign 'ism.'"

C. W. KELLOGG
President, Edison Electric Institute.

". . . keeping the utilities as solvent as possible is a strong defense desideratum, because impoverished utilities would mean inefficient service. This fundamental need of our business is as important for the emergency as during the trying post-war depression that is bound to follow the present stupendous public expenditure."

LEON HENDERSON
Administrator, Office of Price Administration and Civilian Supply.

"Inflation is an ugly word, and so are its consequences. It takes deep bites into the standard of living of every wage earner, every person of fixed income. It dilutes every savings account and every insurance policy. When it is in its stride, no manufacturer is safe in his commitments and no housewife is safe from rationing. No class gains permanently by inflation."

JOSEPH W. MARTIN, JR.
Chairman, Republican National Committee.

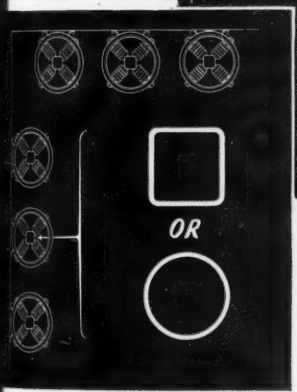
"Under the conditions of chaos, confusion, exhaustion, gigantic public debt, discontent, grief, and the hatreds and agonies left as the awful aftermath of the wars, the Communists and Fascists will find fertile fields in which to plant their propaganda for debt repudiation, property confiscation, abolition of the Constitution, and the establishment of a dictatorship of the Stalin type or the Mussolini or Hitler type."

HENRY A. PALMER
Editor, Traffic World.

"There is no greater racket in transportation or anywhere else than the system that permits operators to use improved waterways without payment of tolls and shippers to profit by lower rates thus made possible. One who uses public property for business purposes should pay for that use and not have an advantage over a competitor who must pay for his roadway. This nonsense is carried to the nth degree when the government itself conducts a common carrier waterway on our great rivers."

e neat, streamline earance—easily ac- ible to inspection and ustment.

superstructure nec- ry—easily mounted all or ceiling. Note gap between phases. es can be round or are as shown below.



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All stresses taken by mounting frame with insulators in compression loading under all conditions.

Gasketed covers are housings only, —take none of the stress.

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First 1,000,000-Volt Industrial X-Ray Unit

Built by General Electric, installed at Schenectady and dedicated in December, 1940 as part of the program commemorating the 40th anniversary of the G-E Research Laboratory. An identical unit is being installed at Combustion Engineering's Chattanooga Shops in a special building which has 18-inch walls extended 5 feet below ground to assure complete safety.

The 1,000,000-volt x-ray unit consists of a resonant transformer with a coaxially-mounted, multi-section, high-vacuum x-ray tube within. Both are contained in a grounded steel tank that employs compressed gas (Freon) insulation. The tube itself consists of twelve sections; measures 6 feet long; 4 inches in diameter. The x-rays are generated from a target mounted in the end of an extension chamber projecting out from one end of the electrically grounded tank. The new unit is shock-proof, unusually compact and simple to operate.

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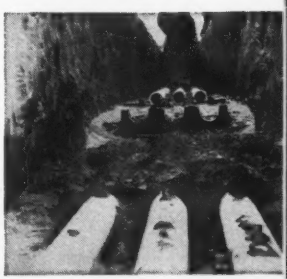
YOU save all the expense of "concreting-in" when you use Johns-Manville Transite Conduit. So strong it needs no protective casing of any kind, this durable duct holds its true form under sustained earth loads and traffic pressure. Warping is practically eliminated.

And you spend less money on maintenance, for Transite is an asbestos-cement product . . . completely non-metallic and inorganic. It can't burn, rot or cause dangerous fumes or gases. It offers exceptional resistance to weather and corrosion. Yet installed costs are low, for Transite's long lengths, light weight and smooth bore make work fast and economical.

For complete details, write for brochure DS-410. Johns-Manville, 22 East 40th Street, New York, N. Y.

NO CONCRETE CASING is needed when you install J-M Transite Conduit. It does not warp... holds its strength and true form under heavy earth loads and traffic stress.

MADE OF ASBESTOS AND CEMENT, Transite Conduit cannot rust or rot... offers exceptional resistance to all forms of corrosion.



TRANSITE DUCTS are light in weight, easy to assemble. Their smooth bore stays smooth in service... permits easy, rapid cable pulls at any time.

FOR EFFICIENT, LOW-COST SERVICE, SPECIFY...

Johns-Manville TRANSITE DUCTS

TRANSITE CONDUIT... For use underground without a concrete envelope and for exposed locations.

TRANSITE KORDUCT... For installation in concrete. Thinner walled, lower priced, but otherwise identical with Transite Conduit.

THINGS WHOSE RELIABILITY WE COUNT UPON

THE seafaring man knows that the Government's buoys are reliable—that he can depend upon them to guide him safely through strange waters. The railroad man has the same confidence in the signals that enable him to maintain daylight schedules right through the night.

Yet neither the mariner nor the railroad engineer has any greater confidence in buoys or signals than have the management of utility companies and private industrial plants in the Exide Batteries that serve and safeguard their own organizations.

For Exides are made for every storage battery purpose. And whether they're installed for stationary, automotive, or any other service, they can be counted upon—just as they have been for more than half a century — to prove their traditional dependability.

Exide BATTERIES

THE ELECTRIC STORAGE BATTERY CO.

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PHILADELPHIA

Exide Batteries of Canada, Limited, Toronto

• *One of a series of advertisements outlining the five ways in which Water Meters increase operating efficiency, reduce costs and add to the revenue of the modern Water Works.*

ETERAN

HE is independent and proud, yet democratic and friendly. He is the envy of the rest of the world, and its hope. He is generous and tolerant and peace-loving—and withal the most powerful man in the world. He is the American workman.

His hands, accustomed to the feel of wrench and lever and gauge, may never have held a gun; his mind, trained to think in terms of tolerances as fine as 1/10,000 of an inch, may never have wrestled with a problem of military strategy; and yet he is the veteran of a thousand campaigns.

His campaigns began in the laboratories, and his prowess was proved in the test pits of American industry. His battles were waged on the factory floor and in the field. His victories have helped to make the citizens of the United States the most fortunate people in the world, and the U. S. the greatest nation on earth.

In the plants of the General Electric Company, working with General Electric scientists and engineers, this man, the American workman, has made giant generators to light whole cities, X-ray tubes to penetrate the mysteries of human flesh and metal castings, radio and television apparatus to project man's voice and image through space over the mysterious waves of the ether.

Today, in the gravest hour of world history, he is engaged in the greatest campaign of all. But there is serenity and confidence in his face, and the experience of a thousand campaigns behind him. He is sure of his own abilities, certain of his country's future. General Electric Company, Schenectady, N. Y.

GENERAL ELECTRIC

952-218B1-211

Elliott 675,000-lb.-per-hr. deaerator, one of two units recently shipped to Philo Station of Ohio Power Company. They are the fifth and sixth Elliott deaerators for this plant.

TANKS ... *for power plant defense*

Tanks for mechanized warfare are very much in the public consciousness today. Power plants also need their tank defense. They get it in deaerators and deaerating heaters, which defend the plant against oxygen corrosion in boilers and the feed-water system. Deaerating equipment has so well proved its effectiveness in corrosion warfare, that practically all modern, well designed plants use deaerating units.

The U. S. Navy is using deaerators on practically all of its vessels now building. The Navy calls these units "deaerating feed tanks." Elliott, of course, is building many of them. But an Elliott deaerating unit is much more than an excellent tank job. There are more than 20 years of experience back of the design of Elliott units. You can be sure that the smallest details of water and steam distribution, the proper location and proportion of contact areas, the regulation of steam and water flow, the accessibility of parts and the designing of the whole unit to your requirements are backed by long experience in the practical art of deaeration.

Your defense against corrosion is perfect with an Elliott deaerator.

ELLIOTT COMPANY

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JEANNETTE, PA.
District Offices in Principal Cities

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ELLIOTT DEAERATORS *and* DEAERATING HEATERS
... front line equipment to combat corrosion

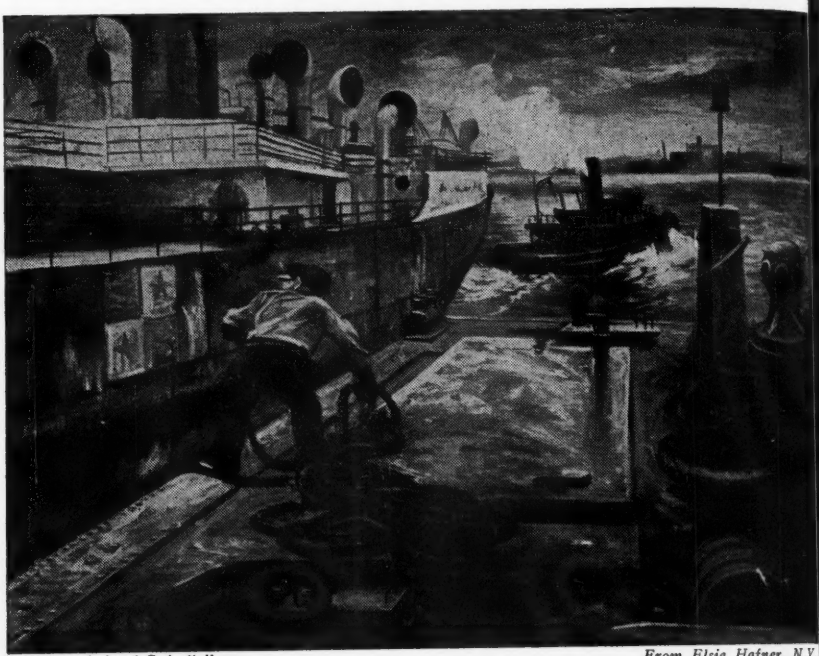
Utilities Almanack

AUGUST

28	Th	¶ *Empire State Gas and Electric Association will hold annual convention, Saranac Inn P. O., N. Y., Sept. 11, 12, 1941.*
29	F	¶ *Nat. Asso. of R.R. and Util. Commrs. concludes session, St. Paul, Minn., 1941.* ¶ *Amer. Inst. of Elec. Engineers ends meeting, Yellowstone National Park, 1941.*
30	Sa	¶ *American Water Works Association, New York Section, will hold convention, Glens Falls, N. Y., Sept. 11, 12, 1941.*
31	S	¶ *Rocky Mountain Electrical League will hold meeting, Estes Park, Colo., Sept. 11–13, 1941.*

SEPTEMBER

1	M	¶ *Wisconsin Utilities Association will hold meeting, Green Lake, Wis., Sept. 12, 13, 1941.*
2	Tu	¶ *International Association of Electrical Inspectors, Northwestern Section, convenes for meeting, Tacoma, Wash., 1941.*
3	W	¶ *Pennsylvania Electric Association opens annual convention, Bedford Springs, Pa., 1941.*
4	Th	¶ *National Bus Traffic Association will hold annual meeting, Chicago, Ill., Sept. 15, 16, 1941.*
5	F	¶ *Maryland Utilities Association starts annual meeting, Ocean City, Md., 1941.*
6	Sa	¶ *State-wide (Maine) Safety Conference will be held, Portland, Me., Sept. 18, 19, 1941.*
7	S	¶ *American Transit Association will hold convention, Atlantic City, N. J., 1941, Sept. 27–Oct. 2, 1941.*
8	M	¶ *Mid-West Gas School and Conference open, Ames, Iowa, 1941.*
9	Tu	¶ *Maine, New Hampshire, and Vermont Telephone Association open 3-state joint meeting, Bretton Woods, N. H., 1941.*
10	W	¶ *Pacific Coast Gas Association starts convention, Del Monte, Cal., 1941.* ¶ *Michigan Municipal League opens meeting, Traverse City, Mich., 1941.*



Courtesy of the A.C.A. Gallery *From Elsie Hafner, N.Y.*

Oil Boats

From a Painting by Joe Jones

Public Utilities
FORTNIGHTLY

VOL. XXVIII; No. 5 AUGUST 28, 1941

What Should Be Done to Improve Our Commission Laws?

Pending Bills for Modifying Procedure before Regulatory Agencies

The author considers, among other things, the question whether the proposal to establish independent hearing commissioners with power to enter decisions—which become final in absence of review by the regulatory agency—will strengthen or weaken the administrative process.

By OSWALD RYAN
MEMBER, U. S. CIVIL AERONAUTICS BOARD

THE unprecedented growth in the past few years of the administrative body as an agency of social, economic, and legal control has given rise to one of the most bitterly contested arguments relating to the internal operation of our government in the modern annals of the country. This battle has ranged from debates over the very foundation and theory of administrative regulation to discussions of the most obscure and detailed mechanisms of administrative bodies, no part of the system being considered too trivial to escape the searching eyes of the opposing forces.

After several years' experience under the expanded system of administrative control, emphasis in the debate has now shifted from the question of the essential validity and necessity of the administrative agency as a part of our government to the equally important question of its practical operation in achieving administrative justice. Perhaps the main cause of this change in

emphasis has been the realization that, regardless of divergent views on the necessity and propriety of the administrative process under the American theory of government, economic developments have rendered futile further challenge to its presence in the American system.

Whether this change has been due to a feeling that the administrative system has come to stay and that all pleas for a return to *laissez faire* are moot, or whether it has resulted from other causes, is not important. The fact remains that the issue has shifted to the practical operation of administrative agencies.

Of those phases in the new controversy, probably the most bitter have had as their focal point the subject of procedure before the administrative tribunal.

On the one hand, critics of the existing modes of procedure have frequently indulged in blanket condemnation of the administrative process, voicing their complaints in vague generalities that seem to imply antipathy to all methods of procedure that differ from common-law concepts, with little thought to the question of the applicability of some of these cherished doctrines to administrative bodies. On the other hand, overzealous advocates of the administrative system have attempted to reject, in an equally illogical manner, any and all suggestions for procedural reform. Naturally, these arguments, far from presenting a sound basis for an appraisal of the existing forms or yielding material for intelligent revision, have served only to becloud the issues and make the entire argument appear as a struggle between reactionary and radical forces.

It is true that not all debate has been limited to abstract discussions of the merits of the opposing contentions; some proposals of a positive nature, such as the Logan-Walter bills,[1] have been brought forward but too often these concrete proposals have been, to say the least, abortive efforts. The term "abortive" is not intended to imply that the time was not ripe for reform in the administrative process, for students of administrative law have generally agreed that certain changes could and should be made to improve the procedure of administrative agencies. Rather, it is used to point out that these proposals, although praiseworthy as to their intended objectives, were hasty, ill-planned measures which, as a practical matter, would have served only to confuse and weaken the administrative process to the detriment of all persons concerned.

Recently, however, there has been presented in the Report of the Attorney General's Committee on Administrative Procedure a thorough and constructive critique of the administrative process.[2] This committee, composed of eminent lawyers,[3] was appointed in the early part of 1939 by the Attorney General at the request of the President for the purpose of investigating the "need for procedural reform in the field of ad-

[1] Several similar bills relating to the subject of administrative procedure are referred to by this name. However, for the bill finally passed by Congress and vetoed by the President see: H. R. 6324, 76th Congress, 3rd Session (1940).

[2] Published by the Government Printing Office as Senate Document No. 8, 77th Congress, 1st Session.

[3] The membership of the committee submitting the final report was composed of Dean Acheson, chairman, Francis Biddle, Ralph F. Fuchs, Lloyd K. Garrison, D. Lawrence Groner, Henry M. Hart, Jr., Carl McFarland, James W. Morris, Harry Shulman, E. Blythe Stason, and Arthur T. Vanderbilt.

ministrative law."[4] After the work of nearly a year, during which time detailed studies were made of a majority of the governmental agencies whose actions affect private rights and interests, the committee released its report setting forth its criticism of the administrative process and its suggestions for improving existing modes of procedure.

THERE can be no question that the committee has fulfilled well a difficult and onerous task. Not only has it provided the first complete study of the problems that must be met in any attempt to improve administrative procedure; in analyzing the subject it has, on the whole, demonstrated a sympathetic understanding of the peculiarities of the administrative process that make all questions arising in this field of government so difficult of solution. Although the entire committee agreed on most of the major weaknesses of existing procedure in administrative law, three of its members added further views and recommendations,[5] which are, in general, more restrictive than those of the majority. In addition to the general statement of views embodied in the report, both the majority and the minority of the committee expressed their recommendations in the form of proposed legislation. These bills have since been introduced in Congress as Senate bills 675 and 674, respectively, and hearings on both proposals are presently being held before a subcommittee of the Senate Committee on the Judiciary.

THE bills seek to accomplish a uniformity of procedure in the various quasi legislative and quasi judicial agencies of the Federal government. Such uniformity, to the extent that it is feasible, is unquestionably desirable and salutary. It is evident that the draftsman of S. 675, the majority bill, has attempted to accomplish this purpose with the least possible interference with the existing procedures that have evolved out of the careful study and experience of the various Federal agencies affected. There is implicit in this bill a recognition and an understanding of the distinctive characteristics of the administrative process that make the application of a uniform and rigid code of procedure to the numerous and diverse administrative agencies of the government impractical, if not impossible.

[4] See the correspondence leading to the appointment of the committee. Report, pp. 251-253.

[5] These members were Messrs. McFarland, Stason, and Vanderbilt. Report, p. 203. Mr. Chief Justice Groner, who submitted a separate statement of his views, joined in the recommendations of the minority.

¶ *". . . S. 674, the minority bill, does not appear to be well adapted to the administrative process. . . . It seems probable that this bill would delay rather than expedite the administrative process, make it more expensive to the parties and to the government, and in some respects would make administrative procedure so involved as to be intolerable from the point of view not only of the persons regulated but also the public generally."*

On the other hand, S. 674, the minority bill, does not appear to be well adapted to the administrative process. Some of the shortcomings of this bill are set forth in the comments of the majority of the committee.[6] Still stronger grounds of criticism have been presented in the hearings on the bill before the Senate committee. It seems probable that this bill would delay rather than expedite the administrative process, make it more expensive to the parties and to the government, and in some respects would make administrative procedure so involved as to be intolerable from the point of view not only of the persons regulated but also the public generally.

Of all the proposals of the bills, the ones treating with the conduct of adjudication at the trial examiner stage will probably evince the most heated debate. It is in relation to this subject that the Attorney General's committee encountered its most controversial question; it is in relation to this subject that one finds the sharpest cleavage between the majority and minority proposals and the most marked difference of opinion among legal scholars.

Despite the divergent views of the majority and minority on the problem of adjudication, the committee agreed that one of the greatest weaknesses of administrative procedure is found in the existing trial examiner system. In an effort to improve procedure at the hearing stage the two bills set up within each agency a group of independent hearing commissioners, to be nominated by the agency and appointed by a central body called the Office of Federal Administrative Procedure. All hearings in cases of adjudication not presided over by a member of the agency must be held before a hearing commissioner, who is given power to perform all functions necessary to the proper conduct of hearings. In order to increase the effect of the hearing officer's work in the deciding of cases, the bills depart from existing modes of procedure and authorize the hearing commissioner at the conclusion of a hearing to enter a decision, which in the absence of review by the agency becomes the final decision in the case.

The provisions of the two bills, in so far as they undertake to secure more responsible and competent hearing officers, should, and I believe will, command the support of all persons sincerely interested in the improvement of the administrative process. For example, there should be whole-hearted approval of those provisions which make possible the payment of better salaries to the hearing officers.[7] Dean Landis of the Harvard Law School, who had considerable practical experience with administrative law as chairman of the Securities and Exchange Commission, has wisely said that "trial examiners' staffs have, on the whole, too little competence," and that one of the outstanding reasons for this springs from the fact that the agencies are not permitted to pay the trial examiners salaries sufficient to attract ability of the order required. Undoubtedly, administrative

[6] Report, pp. 191, 192.

[7] Section 302(2) of S. 675 provides that the salaries of hearing commissioners shall be $7,500 per annum. In addition, the section provides for the payment of a salary of $8,500 to each chief hearing commissioner. Section 309(c)(2) of S. 674 provides that hearing commissioners shall receive annual salaries of not less than $3,600 and not more than $9,000, the exact amount to be fixed by the Office of Administrative Procedure.

Reform in Administrative Law

"... there has been presented in the Report of the Attorney General's Committee on Administrative Procedure a thorough and constructive critique of the administrative process. This committee, composed of eminent lawyers, was appointed in the early part of 1939 by the Attorney General at the request of the President for the purpose of investigating the 'need for procedural reform in the field of administrative law.'"

bodies will be able to secure better examiners if they are able to pay better salaries; and that opportunity the two bills undoubtedly provide.

Likewise, the judicial qualifications and capacity of trial examiners may very properly be investigated and their qualifications approved by a body independent of the agency, especially a body such as the proposed Office of Administrative Procedure, whose one and only concern would be the improvement of the administrative process.[8]

But while most, if not all persons are in agreement with the proposals to provide a better salary for the hearing commissioner, to require a review of his qualifications by an expert body, and to provide for a delegation to the hearing commissioner of powers of a preliminary, intermediate, or ancillary character, responsible administrative officials may well view with deep concern those provisions which appear to work a transformation in the legal character and status of the hearing officer. For those provisions are likely to lead to a weakening rather than a strengthening of the administrative process. It is not difficult to state the reasons for this concern.

A realistic view of the proposed plan makes it difficult to avoid the conclusion that there will be set up a dual system of administrative adjudication which will involve a vertical division of responsibility in which the hearing commissioner will, in practice, be acting as a trial court and the agency as an appellate body. It is true that the proposed plan does not in terms purport to limit the scope of the agency's final judgment; but it would be difficult to

[8] Section 302(3) of S. 675 authorizes the Office of Administrative Procedure to appoint as hearing commissioner any person nominated by an agency if that office finds the nominee to be qualified by training, experience, and character to discharge the responsibilities of his position. The director of the office is authorized to make such investigations as may be necessary to enable the office to pass upon the qualifications of nominees. Section 309(c)(1) of S. 674 contains similar provisions.

conclude that the whole policy of both bills does not point in that direction.

THE hearing commissioner acts very much as an independent court. He has a fixed tenure of office, and no matter how out of sympathy with the policies of the agency he may be, it appears that he is not removable for that cause.[9] If he subpoenas a witness who refuses to appear or testify, the agency *must* certify the facts to a district court for compliance or for contempt action.[10] The hearing commissioner finds facts, makes conclusions, and enters a decision[11] which in the absence of a timely appeal by one of the parties or unless the agency itself calls the case up for review becomes the final decision in the case.[12] Upon the conclusion of the hearing the hearing commissioner may certify to the agency novel questions or propositions of law concerning which instructions are desired for the proper decision of the case.[13] No authority is granted the agency to give such instructions on its own initiative either during or at the end of the hearing. In a similar vein is the provision that at the close of the hearing the agency may direct that the case be transmitted to it for decision only if one of the private parties petitions for such action and there is good cause shown.[14]

The language of the bills is open to the construction that the agency is not to consider the case on appeal on its own motion except under extraordinary circumstances, a construction that is borne out by the express language of the committee report.[15] The decision of the hearing commissioner is to be final, and the power of the agency to review the case in the absence of an appeal comes definitely in the form of an exception.

OTHER provisions also imply a limitation upon the power of the agency with respect to the scope of review. Thus, it is provided that on appeal from the hearing commissioner the agency itself need only consider the questions specified by the petition for review and need only consider such portions of the record as are specified.[16] The same provision declares that the agency may limit its consideration of a case to the question of whether the challenged findings are clearly against the weight of the evidence, thus implying an independent determination of the issues by the hearing officer.

The total result of these provisions, taking into consideration the spirit as well as the letter of the proposals, will

[9] S. 675, §302(5); S. 674, § 309(c)(3).

[10] S. 675, § 304(2); S. 674, § 309(f).

[11] S. 675, § 304(4); S. 674, § 309(m)(1).

[12] S. 675, § 308(1); S. 674, § 309, paragraphs (n) and (o).

[13] S. 675, § 307(1); S. 674, § 309(m)(2).

[14] S. 675, § 307(2); S. 674, § 309(m)(2). It is interesting to note the use of the phrase "private party." The inclusion of the word "private" in these sections and its omission in other provisions seem to imply that agency counsel will possess no authority to petition for decision by the agency.

[15] "Accordingly, an integral part of the committee's recommendations is that, in the absence of appeal, the decision of the hearing commissioner be final and effective without further action or consideration by the agency. . . .

"In general, the relationship upon appeal between the hearing commissioner and the agency ought to a considerable extent to be that of trial court to appellate court. Conclusions, interpretations, law, and policy should, of course, be open to full review. On the other hand, on matters which the hearing commissioner, having heard the evidence and seen the witnesses, is best qualified to decide, the agency should be reluctant to disturb his findings unless error is clearly shown." Report, p. 51.

[16] S. 675, § 309(1); S. 674, § 309(o).

unquestionably be to limit the powers of the agency to those of an appellate character and to deprive the agency itself of full control over the process of decision. An inevitable consequence will be a vertical division of responsibility for administrative adjudication between the hearing commissioner and the agency, vesting in the former the independent *de novo* decision of the case and limiting the latter to the appellate function.

Although several reasons were given by the Attorney General's committee for its proposal to establish a system of independent hearing commissioners,[17] there can be little doubt that an important underlying cause for the recommendation was the ever-present problem in administrative procedure of a separation of the functions of prosecution from those of adjudication. It is true that the majority of the committee recognized the impracticability of attempting by statutory enactment a complete divorcement of these two functions, and that it refrained from including in its bill a provision, such as that contained in the minority bill,[18] demanding this segregation.[19] Nevertheless, despite the avoidance of extremes in dealing with the question, the fact remains that the majority proposal, although constituting a novel approach, is but a part of the familiar subject of segregation of functions. Thus, the two bills will accomplish a dual separation—one, a segregation of prosecution from adjudication, and the other a division of adjudication between the agency and the hearing commissioner.

THE question, therefore, is squarely presented whether such a division in the process of adjudication will strengthen or whether it will weaken the administrative process. It is impossible to give a sound answer to that question without a consideration of the widely divergent nature of the functions performed by the various administrative agencies. To anyone familiar with administrative law, it should be clear that an administrative procedure which is adapted to one type of adjudication is not necessarily adapted to adjudication of another type.

Federal administrative agencies deal with two general types of cases coming within the classification of adjudication as that term is used in the proposed bills.[20] In one type, the decision is primarily judicial in character; in the other the decision is fundamentally legislative. Cases of the judicial class are well illustrated by proceedings for the

[17] Report, pp. 43-53.
[18] S. 674, § 309(a).
[19] Report, pp. 55-60.

[20] S. 675, § 301; S. 674, §§ 102(d) and 301.

¶ "FEDERAL *administrative agencies deal with two general types of cases coming within the classification of adjudication as that term is used in the proposed bills* [*S. 674 and S. 675*]. *In one type, the decision is primarily judicial in character; in the other the decision is fundamentally legislative. Cases of the judicial class are well illustrated by proceedings for the imposition of economic penalties or sanctions.*"

imposition of economic penalties or sanctions. Such cases are usually concerned with the question whether some statute or regulation has been violated. These cases involve determinations of fact which, although at times technical in character, are nevertheless capable of determination apart from the determination of policy. Thus a case under the Civil Aeronautics Act for the revocation of an airplane pilot's license for flying in violation of the Civil Air Regulations[21] may present the question of whether the pilot was intoxicated while at the controls of the aircraft or whether he flew at an altitude below that permitted by the regulations. The decision in such a case calls for a simple determination of fact uncomplicated by matters of policy.

SOME Federal agencies are engaged almost entirely in regulatory activities of this general type; others are mainly concerned with questions of a different nature. It is to the procedure of these agencies of the latter class that this discussion is particularly pertinent.

Although agencies of this type are confronted with numerous cases dealing with violations, the major part of their time and attention is taken up with decisions that are legislative rather than judicial in character. These cases involve estimates, predictions, and judgments for the future. They call for decisions which primarily implement the national policy which Congress has laid down for the particular industry or activity covered by the legislation creating the agency.

The cases relating to economic regulation before the Civil Aeronautics Board afford a good example of these legislative decisions. These cases require such determinations as the reasonable air-mail rate which may be required by a particular air line to enable it to develop and maintain an air transportation service adequate to the nation's commercial, postal, and national defense interests — determinations in which government financial aid is indirectly provided through air-mail rates to assure the carrying out of the announced policy of Congress. Similar cases under the Civil Aeronautics Act call for decisions as to the extent to which competition between specific air lines may be authorized without detriment to the public interest; decisions as to whether mergers and consolidations of carriers may be consummated without adverse effect upon the public interest; a decision, for example, as to whether the national defense requires a new air service between Manila and Singapore or whether the public convenience and necessity require an additional air line between Boston and New York.

IT is true that such cases also call for factual determinations; but even then the facts are inextricably connected with policy. Let me cite an example: The Civil Aeronautics Board is at this writing engaged in holding a formal hearing through a trial examiner for the purpose of determining the air-mail rates for the Pan American Airways in South America. In determining what a reasonable operating expense shall be for air services between particular points in South America, the examiner's decision necessarily will involve a decision upon the question

[21] These regulations are issued by the Civil Aeronautics Board in furtherance of air safety pursuant to the provisions of the Civil Aeronautics Act of 1938.

Uniformity of Procedure

"THE bills [S. 674 and S. 675] seek to accomplish a uniformity of procedure in the various quasi legislative and quasi judicial agencies of the Federal government. Such uniformity, to the extent that it is feasible, is unquestionably desirable and salutary. It is evident that the draftsman of S. 675, the majority bill, has attempted to accomplish this purpose with the least possible interference with the existing procedures that have evolved out of the careful study and experience of the various Federal agencies affected."

whether seaplanes or land planes shall be used, and the answer to that question may be very vitally tied into the national defense interests. Thus rate and other economic cases may, and usually do, call for decisions in which fact is so bound up with policy that it is impossible to segregate the two.

This whole problem presented by the intermingling of fact and policy in regulatory decisions is accentuated in situations in which the administrative agency and the law which it administers are in their infancy, or in which the industry being regulated is in the pioneering stage.

In the former case, no large body of decisions has been built up interpreting the basic act or fixing policy. As a result, there is little precedent upon which the trial examiner or hearing commissioner can rely in reaching a decision conforming to the views of the agency itself. Most of the decisions of an established agency are but applications of well-settled principles to slightly changed factual situations, and add little to the meaning of the statute or to an understanding of the policy of the agency charged with carrying out its provisions. In contrast, decisions of a new agency are likely to cover questions never before touched upon, and to lay the foundation for later interpretation of the statute. It is of vital importance to all persons concerned that decisions covering new situations not only reach correct factual conclusions, but that they also reflect the views of the agency with respect to policy.

THE governed industry may, as in the case of the aeronautical industry, be advancing so rapidly as to make it extremely difficult to formulate settled policies for its regulation. Those

familiar with the regulation of the public utility industry will recall that thirty years ago the regulatory problem in that industry was entirely different from that which confronts the public utility commission today. The public utility industry was then in the pioneering period; policies were in the making; they were not yet settled. And that describes the situation with which some Federal administrative agencies are faced today. Thus, air transportation, which is only fifteen years old, is moving so fast that new problems arise every day, requiring new solutions, and a decision in an economic regulatory case can scarcely be entered that does not involve policy determination.

In the work of many administrative agencies policy and decision are inextricably interwoven. The individual decision hinges on policy, and cannot be divorced from it. Broad standards of policy form the background, and supply the yardstick against which the facts must be measured. In view of these considerations, it would seem clear that the policies of Congress as expressed in the regulatory statutes which the various agencies administer could best be fulfilled through an administrative process in which there is centralized control of the function of decision in cases of a legislative character or policy-determining character.

THE accomplishment of this purpose does not demand that the proposed hearing commissioner system be entirely discarded. As already pointed out, many of its features merit unqualified commendation. But the system proposed requires modification if it is to implement administrative efficiency and justice.

There should be sufficient flexibility of procedure to permit the agency to delegate to its hearing officers the power of final decision in cases of a routine judicial character and to permit it to reserve to itself the sole decision in cases of the legislative or policy-determining type, leaving to the trial examiner in such cases the conduct of the hearing and the recommendation of proposed findings and conclusions. Moreover, the preservation of full responsibility in an agency charged with carrying out the policies of Congress requires that such agency shall have the power to remove the hearing commissioner whenever it deems his removal essential to effective administration. If it be said that such a provision would give the agency an unlimited power to remove the hearing commissioner, the answer is that the agency must have that power if it is to be responsible for fulfilling the policies of Congress.

THERE would be no objection, however, to the incorporation in the present hearing commissioner plan of a provision which would prohibit the agency from removing a hearing commissioner for reasons not connected with his integrity, ability, or willingness to carry out the policies and interpretations of the regulatory acts as determined by the agency, and which would require the agency to file with the Office of Administrative Procedure a statement of its reasons in the case of a removal. But efficient administration demands that the agency not be burdened with a hearing officer unsympathetic with the policies and efforts of the agency.

We should keep in mind the fact that, as we steadily advance in improving

the machinery of administrative justice, we cannot afford to overlook the human factor. I know of no clearer expression of this truth than the recent statement of the former Chief Justice of the United States in his address on May 2, 1941, to the American Law Institute. Chief Justice Hughes said:

> . . . in every department of administration it is the human factor that counts most. The community looks to our judges for competency, efficiency, and impartiality, without which codes merely add to an accumulation of legal futilities. . . . The community also looks to the administrative agencies, which are multiplied in response to social needs, for competency, efficiency, and impartiality in their respective spheres. So far as they exercise the prerogative of hearing and deciding controversies under legal authority, albeit with their own *appropriate technique and flexibility*, they must commend themselves by exhibiting essential judicial virtues.

Two decades of experience with administrative procedure, as a lawyer practicing before administrative bodies, as general counsel of a major Federal commission, and as a member of another, have convinced me that no particular form of administrative procedure can be counted upon to act as a self-executing instrument of administrative justice, and that while we should exert ourselves in the fullest to safeguard the fair hearing required by the Constitution, we should recognize the importance of the "essential judicial virtues" in the work of administrative judging. And we must take care that those judges are left free, under a procedure of "appropriate technique and flexibility," to apply their integrity and ability without undue restraint in the discharge of the important tasks which have been committed to them by the Congress.

An Employment Lesson in the Defense Emergency

"THIS armament program is going to teach the people one thing—that it is possible to have jobs, to earn high wages, to produce goods if the demand is there. True, during the emergency the demand will be provided in a large part by one customer, the government, and the goods this customer will be buying are not the kinds we as civilians can use. But if employment can be provided for production of armaments it can be provided for consumers goods when we no longer need to produce armaments. Once the people learn that lesson no political party, no government, can long permit widespread unemployment to continue. The people are slow to learn but they learn well. It may mean continued high levels of government expenditures once the emergency is over for such things as parks, public buildings, highways, and the like, but employment our people will demand and employment they will have."

—LEON HENDERSON,
Administrator, Office of Price Administration and Civilian Supply.

M-Day and the Wires

A preview of what is likely to happen in the USA both to commentators and the press—if and when

By HERBERT COREY

THIS may be throwing an egg squarely into the fan. There can be no advance proof that a thing which has not yet happened will happen. On information and belief, as the police say when they cannot find the bloodstains on the guilty man, plus a quantity of personal conviction, these statements will be made.

If and when M-Day comes, the wire and cable and radio communications services will be clapped under government control.

Observe the use of the word "control." The government does not propose to attempt the operation of these services. By that is meant the practical, hard-headed men in the Army and Navy, who will be given the job to do, whatever that job may be. There are bouncing boys in the administration who have been seething with the desire to get their hands on the wires and cables and radios. A kindly way in which to refer to these boys is to use the newly imported word "ideologists." They have made an immense amount of noise, a good deal of trouble, and know a great deal about how to get publicity. At the present moment they do not seem to be amounting to much. The men who will really run things know that an attempt to take the operations of communications away from their managements would be to get into a mess deeper than the Atlantic ocean.

But communications will be controlled.

If and when M-Day comes there will be a form of civil censorship. This will be vigorously denied by everyone concerned. It will go far beyond what is now described as a "voluntary censorship," which is about as voluntary as a shotgun wedding. So far as one can see now this civilian censorship will not be offensive for the good citizen. There may be a little listening-in and some steaming-open but at the beginning, at least, it is probable there will be a good reason for everything that is done. It is a fact, however, that in the desperate effort to stir the people into a mood of belligerence there has been a

disposition shown in some quarters to copy what is being done in Europe. The attempt to coax the taxpayers into digging bombproofs out in the Middle West is an instance. What begins as a nice, gentle, house-broken civil censorship may run hogwild if the bouncing boys get hold of it.

That there will be a military censorship is accepted by everyone without question.

THERE you have a dim picture of what will happen to communications if and when M-Day comes. Government control, but not a take-over by the government. An effective but not an offensive censorship.

M-Day may not come, of course. Congress is beginning to get huffy because it has been so pushed around. It is not likely to make a formal declaration of war unless the Axis powers declare first. No one thinks they will do anything of the sort. Not many believe the United States will get into a shooting war on land. The extraordinarily provocative quality of our nonbelligerence may bring the Navy into the war, however. Even if M-Day never dawns the situation may be so charged with explosives that the government would be compelled to take control of the communications.

But it will not take over the wires or radio. It isn't big enough.

Consider the situation. In Europe there are relatively few wires. Not many Europeans use the telegraph unless Uncle John actually dies in the house. Even in Paris, which used to rate itself as the only first division city in the world, no American businessman telephoned if a taxi could be found. The only really rapid communication was by a *petit bleu*. Really fast special delivery radios are absolutely controlled by the governments except for the few and mostly fictional outlaw broadcasters who hop around in trucks. Government control and censorship is commonplace in consequence. Every clerk in a telegraph office is a sort of Entered Apprentice censor, and if he does not like what he can misunderstand of the message you offer over the counter he calls for the Blue Lodge. The girls in the telephone centrals listen in to the conversations, even to the extent of making visiting Americans talk in their versions of the prevailing language. Hovering over the whole are the censors, who are not a bad lot of guys—Germans and Italians excepted—except that they smell so of ink. The censoring job is a simple one.

It would be merry—one word censored—in this country.

IN the first place there were at last accounts something like 18,500,000 telephones in this country. Each month there are about 3,000,000,000 local calls and almost 80,000,000 toll messages. The total investment in the telephone industry of this country of 130,000,000 persons is approximately $5,000,000,000, which is almost as much as Congress tossed into Her Brittanic Majesty's apron under the first lend-lease act. (There's another lend-lease act on the way.) The telegraph business is not so active, owing to the fact that it is easier to talk than it is to get the bad news into ten words. Yet the wire-telegraph companies handle about 200,000,000 messages annually. This total has been considerably increased by the possibility that we may draw cards in Europe's game. In the

last reported year considerably more than 100,000,000 words were handled in 4,264,669 cable messages. Radiotelegraph carriers added 755,225 messages to this total. The land-wire and ocean-cable carriers reported 2,435,000 miles of wire and cable, of which 119,216 were submarine cables. Nothing need be said about the finances of the telegraph companies. The majority of the Federal Communications Commission favors a merger of the two major companies, for economy's sake.

It would be a sheer impossibility for the government to take over the telephone and telegraph and radio structure. It is too big for government. Government knows it.

YET if that M-Day nightmare comes true, there must be some form of government control. The intent is that there shall be no interference with the present set-up. When government, by which is meant the Army and Navy, wishes something done, or wishes that some other thing be not done, the heads of the wire services will be communicated with. General orders and policies would be issued by and through the present managements of the wire-communications industry and through the FCC to the radio companies. To complete the picture it should be said that there are 4 major networks, 900 broadcasting stations, covering every inch of American territory, and 55,000 miles of teletype lines on which weather reports are made by the Civil Aeronautics Board for the guidance of civil and military air operations. The radio and wire communications services of the fire and police departments of all American cities will also be included. DCB has issued a special manual for the instruction of the several thousand cities and towns involved.

DCB is the Defense Communications Board. It is the drafting organization for the M-Day communications plans. It is more or less the duty of all good citizens to be critical of all government groups in times like these, rather than to throw soft soap into the air at each sight of a uniform. In defiance of this maxim, however, it may be said that DCB has been functioning very well, indeed. It is made up of hard-headed and practical men. Chairman James Lawrence Fly of the FCC has come in for plenty of criticism for the recent ruling of the commission that networks must be broken up, and has been obliged to give some ground. His ability and his knowledge of the radio industry are not questioned even by those who most vigorously dispute his theories. Major General Joseph O. Mauborgne is chief signal officer of the Army and Rear Admiral Leigh Noyes is director of naval communications. They are credited with sound

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¶ "IT *is a fact . . . that in the desperate effort to stir the people into a mood of belligerence there has been a disposition shown in some quarters to copy what is being done in Europe. The attempt to coax the taxpayers into digging bombproofs out in the Middle West is an insurance. What begins as a nice, gentle, house-broken civil censorship may run hogwild if the bouncing boys get hold of it.*"

professional qualifications and great common sense. Breckenridge Long is Assistant Secretary of State in charge of the division of international communications, which is a job combining egg-walking ability with brass knuckles, and Herbert E. Gaston was once an editor, which would harden any man, and is now an assistant secretary of the Treasury. The Coast Guard is in Mr. Gaston's department and in the last few of Gaston years the CG has been given the men and equipment it had been starved for. Its extraordinary competence is not widely enough known.

THE functions of the board, as stated in President Roosevelt's executive order of November 12, 1940, are to "determine, coördinate, and prepare plans" for the needs of the "armed forces, of other governmental agencies, of industry, and of other civilian activities for radio, wire, and cable communication facilities of all kinds, the allocation of such portion or such portions of such facilities as may be required and;

"The measures of control, the agencies to exercise this control, and the principles under which such control will be exercised over nonmilitary communications to meet defense requirements."

That clause would seem to give the DCB full power to plan, but not to execute. In accordance with the procedure President Roosevelt has adopted, any plans made will be put into operation by executive sanction only. Its subcommittees are directed to express by written report their findings and recommendations. Other governmental agencies, including the existing Interdepartmental Radio Advisory Committee, are directed to coöperate as called on.

"Reports containing the findings and recommendations of the board shall be submitted to the President for final action through one of his administrative assistants."

That executive assistant might be Lowell Mellett, chief of the Office of Government Reports. The OGR is reputed to be a fact-finding organization of which the duty is to keep the President informed on practically everything. Mr. Mellett has been unofficially designated by the press as the Chief Government Censor, if and when there is such an office. The executive order under which the Defense Communications Board was created specifically directs that it "shall take no cognizance of matters pertaining to censorship." It is possible, of course, that the executive assistant through whom the DCB's reports will be presented to the President may ultimately turn out to be Colonel William J. (Wild Bill) Donovan, who has recently been given an as yet vague authority to collect and correlate all information on international affairs as gathered by the various Federal agencies. These include the FBI, the Army and Navy Intelligence Services, and the various other fact-finders in the departments of the government.

AT the time of writing no one seriously believes that a condition may arise which would make the censorship of communications advisable in this country. It is admitted in off-the-record conversations that the administration is not at all pleased with the lack of unity which admittedly ex-

Censorship in Europe

"THE girls in the telephone centrals [in Europe] listen in to the conversations even to the extent of making visiting Americans talk in their versions of the prevailing language. Hovering over the whole are the censors, who are not a bad lot of guys—Germans and Italians excepted—except that they smell so of ink. The censoring job is a simple one."

ists. In 1917 everyone, broadly speaking, was whooping to go to war. In 1941 the indications are that four out of five Americans will sell their share of any prospective war very cheaply. No one doubts that if we do go to war the national response will be a loyal one, but if there is a lack of enthusiasm it is feared that enemies might not be impeded by what under other conditions would be a national watch. The clause in the executive order relating to the imposition of censorship—by presidential order—is an evident safeguard against a distant and slight possibility.

Any such order for the censorship of communications, even if mild and regional, would of necessity be preceded by the censorship of the press. There are men in the administration who would like to bring this about. Secretary Ickes of the Interior has been carrying on a screaming feud with the newspapers for years. Vice President Wallace and Harry Hopkins are typical of the group which would like to have more control over the press. Secretaries Stimson and Knox of War and Navy have complained of what they consider indiscretions. An example of these "indiscretions" is that one tab published pictures of the badly battered British warship *Malaya* as she steamed through New York harbor in broad daylight, under the observation of thousands of people. Another banged-about British ship made another American port, and one small newspaper told about it, and the Navy came down on the editor like wolves. He had not even suspected that he had told a naval secret, inasmuch as the British sailors were all over the place, wearing caps with the ship's name on the bands. Since then the newspapers have been extremely cautious, although editors grumble that they have been given no definite instructions as to what is and what is not a secret. If

they use their own judgment, "and we guess wrong, we're in the doghouse."

THIS editorial point of view was brought out clearly at two meetings in the National Press Club, at which editors and correspondents discussed the situation with Lowell Mellett, chief of OGR, and the heads of the War and Navy publicity divisions. The government men made it convincingly clear that they wish to work in harmony and understanding with the press, although they had no rules to impose. It may be accepted that this very effective "voluntary" censorship will be continued along the lines which proved satisfactory during the first World War. It may also be accepted that if conditions in this country were to show signs of getting out of hand the military censorship — to which no objection whatever has been suggested —would be extended to cover all publications. In any event censorship would be imposed on wire communications in certain regions.

These regions might include those in which troops are now being trained. No information of troop movements would be permitted. Messages between soldiers and their friends or families which might give even a vague hint of impending movements would be barred. The efficiency with which this could be done was disclosed in the recent dispatch of 4,500 Marines from a southern port on the expedition to Iceland. A few persons in Washington knew the facts, but they were silent. In the southern port thousands must have seen the ships sail away, but no hint reached the rest of the country. Regions in which labor troubles or disloyal activities developed would certainly be cut off from communication in the event of war. The Army and Navy would take charge. Their specialists have been studying the problem carefully, aided by the experience gained in the first war. No one who has come in contact with them will doubt their entire competence. Mail communication from military centers would be controlled by military censors. It is not likely that any effort would be made to censor mails elsewhere. The job simply is too big to handle at present.

A PREVIEW of what may be expected in the way of civilian censorship was afforded by the let-the-boys-go-home incident. Almost a million conscripts had been assured that they were to be drafted for one year's service only. When the administration tried to hold them longer some protested that an extension of their draft term would be a violation of contract. A good many wired their Congressmen. Senators Wheeler, Taft, and Nye perhaps got the bulk of these telegrams, inasmuch as they had led the fight to let the boys go home. (It should be interpolated that these Senators maintained that the dates of induction into service were so staggered that new conscripts would be taken into the Army in numbers corresponding to those discharged, and the Army would not be weakened at any time.)

The conscripts had not realized that "they're in the Army now." Their attempt to influence legislation was a clear violation of Army regulations. (This regulation only intermittently applies to generals.) But news of the fact that they had sent the wires seems to have leaked out somewhere between

the offices of the Senators and the point of origin of the wires. No military censorship had been imposed, and so far as discoverable the receipt of the telegrams had not been disclosed by the Senators, but someone told. Maybe the men themselves told reporters. It should be recalled, however, as a fact that may or may not have any bearing on this or any other angle of censorship, that the communications companies have been under more or less constant attack by the administration ever since Senator Minton raided the files of the telegraph companies. Up to that time it had been believed that in the United States the secrecy of communications should be sacredly guarded. This principle was reaffirmed in Congress lately when the legislators refused to grant the FBI the right to tap wires, even with the advance sanction of the Department of Justice and in cases of the most flagrant crime. To complete the record it should be noted that when Indiana refused with some enthusiasm to reëlect Minton, the President gave him a lifetime job on the Federal bench.

THE communications companies are planning to coöperate in every possible way with the Army and Navy. Cable traffic is to be closely watched, of course. This would come inside the military censorship bounds, and a considerable force of Army and Navy officers are being instructed in the duties of censors in wartime. This instruction covers a wide field in a thoroughly practical way. Agents of the FBI, the State Department, and experts on international law and relations address these officers when they are assembled in classes. It is impossible to say in advance the form that treasonable or enemy action might take and the men must be on the alert. A floor has been set aside in a New York building and there all censorship of in-and-out foreign communications will be handled.

The Coördinating Committee of the DCB—"to plan, coördinate, maintain liaison with the other committees and to supervise their work"—consists of representatives of the State, War, and Navy departments, the Coast Guard, and is chaired by E. K. Jett, chief engineer of the FCC. The law committee is made up of men from the same departments of the government. Next in order is the Labor Advisory Committee made up of representatives of the AFL, the CIO, and the National Federation of Telephone Workers. It reports directly to the DCB, but consults with the Coördinating Committee and the Industry Advisory committee,

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¶ "IN *Europe there are relatively few wires. Not many Europeans use the telegraph unless Uncle John actually dies in the house. Even in Paris, which used to rate itself as the only first division city in the world, no American businessman telephoned if a taxi could be found. The only really rapid communication was by a* PETIT BLEU. *Really fast special delivery radios are absolutely controlled by the governments except for the few and mostly fictional outlaw broadcasters who hop around in trucks.*

which comes fourth in line. Walter S. Gifford of the AT&T is chairman of the Industry Advisory Committee, Dr. C. B. Jolliffe of the RCA is secretary, and the committee includes representatives also of the Globe Wireless, the IT&T, Postal Telegraph, Press Wireless, Tropical Radio, U. S. Independent Telephone Association, and Western Union. The duties of the committee, as might be inferred, are to offer advice to the DCB "on all problems of general concern to the communications companies."

OTHER committees cover amateur radio activities, aviation communications, cables, domestic broadcasting, the Office of Civilian Defense, interdepartmental radio, international broadcasting, radio communications, state and municipal facilities, government facilities, and land-line telegraph and telephone. The representatives on these committees are all practical men and between them they probably cover all the present knowledge on communication by electricity. As outsiders see it the defect in the plan lies in the almost infinite prospect for delay and confusion before whatever may be decided on is decided on and put into operation. Subcommittees of subcommittees must report, their reports passed on, and then passed up to the Coördinating Committee which must correlate the findings with the findings of other subcommittees and then prepare a report which will then go to the President for action. That action may be indefinitely postponed by the White House is shown by the unfortunate recent conflict between the OPM and the Office of Price Administration and Civilian Supply. The OPM, with William Knudsen and Sidney Hillman as coadministrators, had ordered a 20 per cent "initial" and tentative cut in the output of automobiles, domestic refrigerators, washing machines, etc. Leon Henderson, boss of OPACS, without consultation with OPM, ordered a 50 per cent cut in the same articles. In the developments which followed it was revealed that an executive order clarifying this conflict on authority over priorities had been on Mr. Roosevelt's desk for weeks, but he had not been able to find time in which to study it.

THE danger that control of communications may be stoppered up in another bottleneck may be more apparent than real, however. It is on the cards that a Coördinator of Communications may be named, probably within the Army, since all domestic communications would be under Army control in the event of war. In any case the War Department has already stated that its Signal Corps can supply Army units with information concerning communications networks, telephone, telegraph, and radio, in any area. This means that if need be all outlets can be hooked together under single control. The DCB has already blueprinted plans for the maximum use of radio if war were to come. Official communiques would be issued several times a day if need be to inform the public on the progress of events. An agreement has already been entered into between international broadcasting services and the State, War, and Navy departments as to the kind of news which would be circulated. Plans have already been set up for the creation of a separate press-radio service in

the War Department, in recognition of the fact that dissemination of news by radio is assuming greater importance.

Chairman Fly of the FCC has repeatedly insisted that the government ownership of radio networks has no part in the present plans. The constantly reappearing fear that this is being contemplated probably is due to the known attitude of some men in the administration, who have openly sought for the control of the utility industry. Railroad men are worried for fear government control of their business may be sought under cover of the "defense" plans.

Apart from this possibility it appears that plans for the control of radio are well in hand, if war should really come. Broadcasts will be used to whip up popular sentiment, of course; broadcasting to Latin America and Europe will be strictly controlled, and it may be that the short-wave propaganda broadcasts now originating in Europe will be jammed. These come through several hours each day now, but so far as inquiry has revealed few hear them, and not many are influenced by them. They are, in cold fact, hardly worth listening to even by the inquisitive.

RIGID government control of radio in time of war will be compelled, if only for the reason that some broadcasting stations might be beacons for enemy aircraft equipped with suitable direction-finding apparatus. Editorial scrutiny of news broadcasts and entertainment programs would likewise be necessary. The DCB has also made plans to circumvent jamming — or it hopes it has made plans — injury to equipment, and wire and cable cutting. Monitoring stations on the watch for illegal operations by the "hams"—the amateur radioers—have been so successful that it is not believed any bad ham could operate more than a few hours without detection and capture.

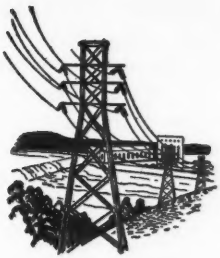
At the time of writing, then, there is good reason to assume that if and when M-Day comes, communications will be competently handled by calm men.

It might be noted, also, that we have a fine natural talent for hysteria when war is on.

The Advantages of the Holding Company

"THE *history of the development of the utility industry clearly shows that the holding companies have been of enormous benefit to the people, in the extension of electric service to millions of homes that otherwise would not have it, in the lowering of rates and improvement of service, and in the financing of the huge developments that made all these benefits possible. One would suppose that, after such abuses as might have risen in this great development process had by law been eliminated from the holding companies, they would be allowed to continue to perform their useful functions in the public service.*"

—C. W. KELLOGG,
President, Edison Electric Institute.



The Arkansas Valley Authority

Part II. The Proposed Arkansas Valley Authority

(In Part I of this article the author discussed the importance of rivers in the settlement of that region; the exploitation of natural resources, including land, as a basic cause for economic decline of the region and for the present lack of use and the uncontrollable hazards of these rivers; the trial and error methods used during the past two hundred years, resulting in a basic scientific approach capable of solving the river problems; the scientific plan includes treatment of the entire watershed of the stream, including a system of headwater reservoirs.)

By H. W. BLALOCK
FORMER MEMBER, ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

THERE are two proposals before Congress to create an Arkansas Valley Authority. The first proposal was presented in two identical bills introduced on January 10, 1941, in the House of Representatives by Congressman Clyde T. Ellis of Arkansas, and in the Senate by Senators John E. Miller and Hattie W. Caraway of Arkansas. The second proposal is similar and is in the nature of a substitute for the latter bill. It was presented in the Senate on March 17, 1941, by Senator E. C. Johnson of Colorado. The two proposals seek to achieve the same goal, but Mr. Johnson's proposal provides for a different type of administration and also seeks to satisfy the objections raised by the people in the irrigation section of the upper Arkansas river basin.

First, let us see what the original bill provides. It provides for a Federal corporation known as the Arkansas Valley Authority. The corporation is to be directed and controlled by a board of three directors appointed by the President for terms of nine years. The board shall determine all policies, appoint the personnel, subject to civil service, fix their responsibilities and salaries. All employees shall be responsible to the board and serve at the discretion of the board. The directors shall give their entire time to the work of the corporation and cannot be directly or indirectly financially interested in a public utility or in a business that may be adversely affected by the success of the corporation.

The proposed corporation will have the power to acquire any property nec-

essary for carrying out the work of the corporation, but it may not dispose of permanent dams, or power plants, fertilizers, or munition plants. The corporation has the power to construct dams and reservoirs, power houses, power structures, transmission lines, navigation projects, levees, irrigation canals, diversion facilities, ditches, laterals, conduits, pipe lines, floodways, facilities useful for navigation, flood control and reclamation, defense projects, and other incidental works to develop water control on the four rivers and to connect the various power installations throughout the region.[6]

THE proposed corporation will have the power to produce, distribute, and sell electric power and water provided it gives preference and priority to states, districts, counties and municipalities, agencies of two or more states, and coöperatives. It is given the power to coöperate fully with all Federal, state, and local agencies now engaged in the work related to the activities which the corporation is directed to engage. It is also directed to consult and coöperate with field offices and services of Federal agencies engaged in similar work and may call upon them for information relative to their activities. It is the duty of such agencies to coöperate with the corporation, and the corporation is also directed to supply to related agencies such information, studies, and recommendations as it deems necessary and appropriate.

The bill provides that the President shall, if in his opinion the public interest, service, or economy so requires, direct that the assistance, advice, and service of any Federal agency be given to the corporation. Any individual who may be directed by the President to render such assistance shall be and is subject thereafter to the orders, rules, and regulations of the board. The financial affairs of the corporation shall be audited by the Comptroller General.

THE corporation shall not only be an action agency but also a planning agency. The bill provides that the corporation shall, not later than October 15th of each year, submit to the President plans for the construction and undertakings during the succeeding governmental fiscal year, beginning July 1st. These plans shall contain the projects and activities for promotion of navigation, control, and prevention of floods, safeguarding of navigable waters, reclamation of public lands, and such further plans for integrating regional developments as the corporation finds necessary or appropriate in the national public interest for the conservation and prudent husbandry of the water, soil, mineral and forest resources, and the prevention of waste caused by droughts, winds, dust storms, and soil erosion. The President, after a study and an investigation of these plans, may approve or disapprove such plans or any part of them. The President then shall refer the plans to Congress with his recommendations. The President may at any time request the corporation to submit to him for introduction to Congress additional plans of work of the corporation. Congress, in its best judgment, may alter or modify

[6] The AVA includes the entire drainage basins of the Arkansas, Red, St. Francis, and White rivers. It will include all of the states of Arkansas and Oklahoma and parts of Louisiana, Missouri, Texas, New Mexico, Colorado, and Kansas. It will cover a region averaging four hundred miles wide, extending from the Mississippi river more than one thousand miles west to the Rocky mountains.

the plans in any way it sees fit and make appropriations that are necessary.

A yardstick for determining the cost for electric power is also provided in the bill. The bill provides that the power sold to states, districts, counties, and municipalities, agencies of two or more states, and to coöperatives shall be sold as nearly as possible at cost. More about this yardstick later.

THE bill authorizes the corporation to sell bonds in an amount not to exceed $50,000,000 with which to construct dams, steam plants, canals, pipe lines, conduits, or other facilities to be used for the generation or transmission of electric power or storage and transportation of water for irrigation purposes. In addition, there is authorized $50,000,000 in bonds to enable it to extend credit to states, counties, municipalities, and coöperatives situated within transmission distance from any dam where power is generated by the corporation. In acquiring, improving, and operating electric distribution facilities and generating plants, constructing or acquiring transmission lines, the purchase and utilization of stored water, improving and operating existing canals and incidental works, and in acquiring any interest therein, there is a further authorization of $50,000,000 in bonds which may be sold by the corporation to obtain funds with which to purchase privately owned electric and irrigation properties. These bonds are to mature in not more than fifty years and to bear interest of not more than 3½ per cent, and are to be unconditionally guaranteed both as to interest and principal by the United States.

The bill provides that the President, at his discretion, may transfer any and all Federal projects connected with the development of these streams to the corporation. The bill provides that the corporation shall pay 5 per cent of the gross proceeds derived from the sale of power and water by the corporation to those states in which the corporation carries on its operations, in lieu of taxes on property previously subject to state taxation. More about this tax matter later.

THE bill also provides that several states may enter into agreements and compacts to supplement the purpose of this bill to carry out on behalf of the states appropriate projects, provided that no such agreements or compacts shall become effective until they have been approved by the corporation and ratified by the Congress.

The Arkansas Valley Authority pro-

¶ "THE *Arkansas Valley Authority proposal by Senator Johnson of Colorado provides that the authority shall be a regional agency in the Department of the Interior, under the jurisdiction and control of the Secretary of the Interior. It provides for a single administrator to be appointed by the President and confirmed by the Senate for a term of six years. There is also provided an advisory board of five members appointed by the President and confirmed by the Senate.*"

posal by Senator Johnson of Colorado provides that the authority shall be a regional agency in the Department of the Interior, under the jurisdiction and control of the Secretary of the Interior. It provides for a single administrator to be appointed by the President and confirmed by the Senate for a term of six years. There is also provided an advisory board of five members appointed by the President and confirmed by the Senate. Their terms of office are fixed at six years and they are to be compensated on a per diem basis. One of the members shall be appointed from the upper Arkansas river basin, one from the lower Arkansas river basin, one from the Red river basin, one from the White river basin, and one from the St. Francis river basin. It is provided that this board shall meet with the administrator at his request and at least once a month to consult with the administrator and to advise him concerning the policies to be followed in the administration of this act. This board acts only in an advisory capacity. The administrator shall furnish the board such feasible equipment, supplies, office space, clerical, and other assistance as may be necessary. The administrator shall determine the policies and activities of the authority subject to the direction and supervision of the Secretary of the Interior.

THE scope of activities and powers conferred by this substitute bill is in all respects very similar to the original bill, with one major exception. The Arkansas river is divided now into the upper and lower Arkansas river basins. The Arkansas river and its tributaries west of the one hundredth meridian are declared to be not navigable in fact or in law[7] and the authority shall have no right or power to make any demand or place any burden upon the upper Arkansas river basin for the delivery of water for the benefit of the lower Arkansas river basin or for any other purpose. It declares that the water in the upper Arkansas river basin shall be useful primarily for domestic, commercial, and irrigation purposes. Under the provisions of the bill, the authority cannot interfere with any rights the states now have to water in the upper Arkansas river basin. It cannot abrogate the rights of the several states to enter into agreements or compacts with respect to utilization of water or in any way affect the activities of the Bureau of Reclamation in the upper Arkansas river basin. It provides that the courts of the respective states shall have jurisdiction to require compliance with the provisions of this section with respect to waters within their borders in the upper Arkansas river basin.

What are the merits and demerits of the two proposals? The Ellis-Miller-Caraway proposal provides an authority very similar to the TVA set-up with desirable changes based upon TVA's experience. The Johnson proposal is similar to the Bonneville-Grand Coulee set-up where a single administrator is responsible for the administration of the projects under the direction of the Secretary of the Interior.

THE primary objective of the people of the region is to get the job done. It certainly would be unwise, owing to the great need of the authority, for a controversy to arise over the

[7] The constitutionality of this might be questioned in the light of the New River Case, United States *v.* Appalachian Electric Power Co. (1940) 311 US 377, 36 PUR(NS) 129.

Uses of "Sour" Natural Gas

"RECENTLY there have been discovered in south Arkansas huge deposits—850,000,000,000 cubic feet—of 'sour' natural gas containing hydrogen sulphide and carbon dioxide. The by-products obtained by removing the hydrogen sulphide and carbon dioxide, combined with other available resources, will provide the basis for chemical industries. The very cheap natural gas remaining after the removal will be ideal for fuel for industry, for steam-electric plants producing cheap power, and many other uses."

method of administration which would result in loss of the authority for the region.

It is the opinion of many people in the region, based upon the success of TVA, that the TVA plan is most desirable. It is believed that the TVA plan would give more local control over the projects and activities of the authority which would be beneficial to the region. They favor this method because they believe in the plan of decentralizing the power of the Federal government to the region affected by such powers. It is also believed that due to the wide scope of the activities of the authority the combined judgment of three directors, solely responsible for the success or failure of the corporation, would be better than the policy determined by the Secretary of the Interior, based upon the recommendations of the administrator located in the region. This assumption is based upon the belief that the three directors appointed would have a broad background and experience, wider in scope than the background and experience of a single administrator. Consequently, their combined judgments would be better. The fact that these directors would either know or come to know the region through daily contacts with the people of the region would place them in a better position to correlate the policies and activities of the authority to the desires and needs of the people in the region than could the Secretary of the Interior.

ON the other hand, it may be contended that an administrator who is solely responsible to the Secretary of the Interior could operate the authority in a more businesslike manner than could three directors. The basis for this assumption is that the placing of the authority under the direction of one man solely responsible for the work is more efficient than delegating the work to three members. It is conceivable, however, that the loss of time incurred by the necessity of waiting for decisions made in Washington could impede the work of the authority more than if the decisions could be made in the authority office by a board of three directors. The people of the region favor the TVA plan of the Ellis-Miller-Caraway bill.

The Johnson bill gives preferential treatment to the part of the region west of the hundredth meridian by preserving existing water rights and by providing for final decisions in state courts in all matters relative to water uses and rights. This plan is followed to appease the opposition of irrigation interests and states' rights advocates. The fundamental plan of the AVA is to rehabilitate the region by a complete, unitized, scientific plan of development based upon the principle of the greatest good for all. If all of the region sought to divide and limit Federal jurisdiction so as to preserve and perpetuate the *status quo*, the whole plan of the AVA would be nullified before it began. Certainly the Federal government would not abrogate present existing rights if it is in the public interest that they be retained. The purpose of the AVA is to build up the region by working in close coöperation with the people of the region.

A Start Is Made

A START has already been made to correct the destructive forces at work. Numerous Federal, state, and local agencies are now at work. Federal agencies such as the Soil Conservation Service, the National Forest Service, the Farm Security Administration, the U. S. Engineers, the CCC, REA, and others; state and local agencies such as soil conservation districts, drainage, levee and irrigation districts, colleges of agriculture, farm extension service and experiment stations, game and fish commissions, industrial commissions, and many others are all working at the problem.

The work of the U. S. Engineers is significant. Under flood-control authorization of Congress they have the following upstream reservoir projects [Table I, page 285] under way.

This is a comprehensive program of dam construction. It will take several years to complete those under construction if Congress makes necessary appropriations for completion. To complete the entire program would take many more years. These dams are only the basic dams and reservoirs needed. Other dams, power houses, irrigation projects, drainage, channel-clearing locks, reforestation and proper conservation, and land utilization are required. It will require twenty-five years of carefully planned work at a cost of a billion dollars or more to undo the waste and regenerate the region.

The 36 dams would provide 17,566,100 acre feet of flood protection. If one-third of the total cost were allocated to flood control, the flood-control cost would be $135,398,000, or $7.70 per acre. If this program provided complete flood control (which is unlikely) the direct flood losses of $9,337,000 annually would equal the bare cost for flood control in about fifteen years. Credits for indirect flood losses would shorten the period.

The region is ready now for a great, more comprehensive program, such as the AVA contemplates.

The AVA Storeroom

IF either of the two plans is put into effect, what will be in the storeroom when AVA takes over?

There are approximately 8,000,000 people in the region, of which about 5,000,000 are rural and 3,000,000 urban. Between 1930 and 1940 the total population increased about 200,000 while rural population decreased 75,000. During this period Oklahoma lost 118,-

TABLE I

River	Under Construction Estimated Cost	Authorized Estimated Cost	Recommended Estimated Cost	Total No. Dams	Total Estimated Costs
Arkansas	[1]$89,160,900	$50,805,000	$61,211,000	20	$201,176,900
Red	[2]49,420,000	5,925,000	6,470,000	7	61,815,000
White	25,881,000	33,033,000	79,000,000	8	137,914,000
St. Francis	5,300,000	.....	.....	1	5,300,000
Total	$169,761,900	$89,763,000	$146,681,000	36	$406,205,900

[1] Includes Pensacola dam, Grand (Neosho) river; cost $22,750,000.
[2] Includes Lugert-Altus reservoir constructed by Bureau of Reclamation; cost $1,130,000.

000 and Kansas 52,000 in rural population. There are nearly 2,000,000 children under the age of fourteen years in the region. The wealth of the region in 1930 was approximately $16,000,000,000, or about 4 per cent of the total wealth of the United States. The cash per capita income of the region is very low. The per capita income of Arkansas was $245, compared with $536 average for the nation. All of the other seven states are low in per capita income. The region constitutes 10 per cent of the total area of the United States. The value of manufactured products in 1939 was about $1,000,000,000 out of a total of $56,000,000,000 for the United States or nearly 2 per cent of the United States total. There are approximately 1,000,000 kilowatts of electric generating capacity in the region, of which about 700,000 kilowatts are steam, 100,000 kilowatts hydro, and 200,000 kilowatts internal combustion. This electric capacity generates about 3,000,000,000 kilowatt hours each year, or about 2.5 per cent of the total of the United States. In 1939 about 65,000 farms were served with electricity in the region, or about 11 per cent of the farms, compared with 28 per cent for the United States.

THE Federal government has spent about $650,000,000 for emergency relief through the WPA, FERA, FSA, CCC, PWA, NYA, public roads, and all other relief agencies from April 8, 1935, to December 31, 1940. There were about 160,000 persons on public emergency relief work in March, 1940, according to the 1940 census, which was less than the relief agencies' figures showed. There were over 200,000 seeking work at the same date.

There are still many millions of acres of good agricultural land in the region, particularly in the flood plains and in the irrigated regions. Many millions of other fertile acres could be brought into cultivation by additional irrigation, drainage, and flood-control works. Agriculture plays and will continue to play a dominant part in the economic life of the region. It continues to produce much of the nation's wheat, corn, cotton, rice, sugar, fruits, dairy products, hay and other forage crops, cattle, hogs, sheep, chickens, timber, and timber products.

The region abounds in mineral resources. It contains a large part of the nation's oil, natural gas, and coal which are basic fuels for industry; it contains all of the world's supply of helium, 95

per cent of the domestic supply of bauxite from which aluminum is made; it contains large supplies of lead, zinc, cinnabar (mercury), commercial clays, gypsum, salt, barite, glass sands, silica, marble, phosphate, limestone, manganese, antimony, lignite, chalk, granite, silver, gold, diamonds, and many others.

RECENTLY there have been discovered in south Arkansas huge deposits—850,000,000,000 cubic feet—of "sour" natural gas containing hydrogen sulphide and carbon dioxide. The by-products obtained by removing the hydrogen sulphide and carbon dioxide, combined with other available resources, will provide the basis for chemical industries. The very cheap natural gas remaining after the removal will be ideal for fuel for industry, for steam-electric plants producing cheap power, and many other uses. There are abundant mineral resources for all the industrial development necessary for a completely balanced economy in the region to sustain a population many times that of the present at a higher standard of living than exists now.

The great supply of cheap fuel in the region makes possible a coördinated program of steam and hydroelectric generating plants, which if developed would make possible an abundance of cheap power. Cheap power and cheap fuel are basic needs to develop the other resources of any region. No region has greater possibilities for cheap power than this one.

The private utilities cannot develop the many water-power sites with cheap power as a result. They would have to charge all of the investment to power, whereas the Federal government can logically charge part of the investment to flood control, navigation, conservation, recreation, irrigation, and power. The cost of money to private companies would be much higher than to the government. Furthermore, the private companies could not coördinate the many interrelated interests in water-power projects. As a result of these factors, the cost of power is materially reduced to the government. The construction of steam plants in the cheap fuel areas by the government would firm up the low load factor power at many of the hydroelectric plants. The over-all result would be cheap power for the industrial program of the region.

Balanced agriculture and industry would forever put an end to the "Grapes of Wrath" people and increase the wealth and income of the region many fold.

In Part III which follows in the next issue of the FORTNIGHTLY, *the author concludes with the discussion of the power situation; results to private utilities in the region; the question of states' rights and Colorado's objections to AVA; the tax question; and the AVA yardstick.*

"I FEAR *the aftermath of war. A post-war period is far more threatening and dangerous to this democracy than any foreign military or naval force. When we enter the conflict we would become at that moment a regimented nation. We as individuals would be subordinated to one person—the commander-in-chief—and to one objective, the waging of war. From such a state democracy could hardly be restored.*"

—BURTON K. WHEELER,
U. S. Senator from Montana.

OUT OF THE MAIL BAG

Power Pioneering on the Pacific

I READ with much interest the three articles by Royden Stewart, "Bringing Power to the Farm," which appeared in PUBLIC UTILITIES FORTNIGHTLY, beginning with the May 8, 1941 issue. In the first article on power pioneering I noticed that there were no references to the early agricultural installations on what is now the Pacific Gas and Electric Company system, or to the pioneering efforts of our company. It occurred to me that you might like to have some information regarding the same.

California was favorably situated in that the foothills of the Sierra Nevada mountains had been threaded with ditches and flumes by the early placer miners, and the region provided numerous locations for hydroelectric plants. The first such plant of the present PG&E system was built on the American river near Folsom in 1895.

Even before these early hydro plants, the first central electric station in the world was the steam-electric plant placed in operation in September, 1879, in San Francisco. This central electric station in San Francisco antedated the New York Pearl street station by three years. This was the first central station in that it was the first from which electric light was offered for general distribution. Electric lights had been used before this time in factories, mills, and other places where power was available, but this was the first station erected for the distribution of electric light throughout a city. The station was equipped with two Brush dynamos for supplying arc lights to its customers. After the incandescent lamp was developed, that type of lighting was furnished....

The first farm pumping installations occurred in 1898 on what is now the PG&E system. One of the installations in 1898 was when the transmission line from the Folsom hydro plant to the city of Sacramento was tapped to supply service for a farm pumping plant at Mayhews, near Sacramento. The installation consisted of two electric motors and transformers which replaced gas engines. When it was proposed to tap the line to serve this farm there was doubt expressed as to the practicability of taking energy from the transmission lines running between the generating and receiving stations for the reason that it might not be possible to control the current. However, the installation was made successfully.

Also in 1898, a farmer near Yuba City was persuaded that a small electric motor would be more efficient than a gas engine. The town of Marysville (Yuba City adjoins it) was supplied over an 18-mile transmission line from a hydro plant in Browns valley. The power company built a line, two miles in length, from Marysville to serve this farm with electric lights and for irrigation and other purposes. A 5-horsepower motor was installed on a line shaft which ran a raisin stemmer, cider press, force pump to force water into an elevated tank for domestic use or to furnish power for two walking beams, each of which operated two plunger pumps, each in a shallow well, for irrigation of 25 acres of nursery stock. Service was connected on April 28, 1898.

In 1899 at Lindsay in the San Joaquin valley, A. G. Wishon made several agricultural pumping installations. He wanted to sell electricity on a horsepower-year basis but the farmers wanted to pay only when they used it. Mr. Wishon went to San Francisco and borrowed $25,000 and invested the entire amount in motors and transformers. He went back to Lindsay and offered the first man he met his motors and transformers on the basis of nothing down and 6 per cent interest, the principal payable one-fifth annually. Within two days he had sold all of his motors and transformers and had accomplished what he had set out to do; that is, to obtain needed customers.

Lines were extended into the adjacent area to serve additional farms.

The company was also a pioneer in calling attention to the use of electricity in farming operations. To draw the attention of the farming population to the availability of electric power for farm purposes the company constructed a traveling exhibit in the form of a railroad car supplied by the Northern Electric and run over its lines. Its interior was fitted up with working models of electric motors and pumps and other devices for the use of electricity on the farm. This demonstration car traveled altogether upwards of 500 miles and entertained 6,000 persons.

The Pacific Gas and Electric Company was awarded the Thomas W. Martin Rural Electrification Award for 1939 at the Edison Electric Institute convention in 1940...

—W. G. VINCENT,
Vice President and Executive Engineer,
Pacific Gas and Electric Company.

Wire and Wireless Communication

SENTIMENT in Congress is reported to be increasing for some form of statutory reorganization of the FCC. Already two bills on the subject have been introduced in the Senate and House, respectively.

The Senate measure, introduced by Republican Senator White of Maine, would split the FCC into two divisions of three members each. One division, to be known as the "division of private communications," would exercise regulatory authority over telephone, telegraph, cable, and point-to-point commercial radio. The other section, to be known as the "division of public communications," would exercise jurisdiction over radio broadcasting.

The commission as a whole would only act upon certain matters of a general nature which could not be classified as either radio broadcasting or common carrier communications matters. Such general matters would include the making of procedural rules, the allocation of frequencies as between the various radio services, the qualification and licensing of amateur operators, the selection of commission personnel, and so forth. But within its own field the 3-member division would exercise exclusive jurisdiction. There would be no review of its determinations by the commission *en banc*.

Senator White's bill would have the FCC chairman operate merely as a liaison officer—not a member of either division. The chairman would vote or act upon only those matters which would be considered by the commission *en banc*. Explaining this provision, which is apparently designed to deëmphasize the position of the chairman, Senator White stated:

> Experience has amply demonstrated that the chairman cannot be expected to devote the time and attention necessary to the proper handling and disposition of these matters and also efficiently to discharge the many other duties which are unavoidably his under the act. As to these other duties, an attempt has also been made to clarify the status of the chairman and to make him—and him only—the official spokesman and representative of the commission in certain important respects.

SPEAKING of his proposal to divorce the regulation of common carrier communications from radio broadcasting, Senator White stated:

> When the present [Communications] Act was before the Congress in 1934 the bill passed by the Senate provided for a mandatory separation of the commission into divisions as is now proposed, but this plan was later abandoned and the present commission has been operating under a law which permitted but did not require it to organize itself into divisions. For the last two or three years the division plan has been entirely abandoned, and it seems certain that such abandonment has operated to the detriment of orderly procedure.
>
> We believe students of our legislation are thoroughly convinced of the wisdom of the mandatory division plan for at least two important reasons. They recognize that there are fundamental differences in the two classes of communications above referred to; that rate making and public utility concepts are the very essence of private communica-

tions but have little, if any, application to communications with the public directly; that there has been a tendency upon the part of the commission to confuse the two and to apply the same concepts and philosophies in the regulation of the two. This must be avoided.

In the second place, it is apparent that the subject of public or mass communications and the problem incident to the regulation thereof are so interesting and attractive that they draw public attention; that on the other hand there is very little of news value or opportunity for publicity in the regulation of common carriers; and that this had the result of centering the attention of the commission and its personnel almost exclusively on broadcasting and related problems and of preventing the giving of sufficient attention to equally important problems relating to private communications.

The changes proposed in these two sections would bring about a much needed and desired separation of the judicial and legislative functions of the commission; would contribute to a sounder knowledge on the part of the commissioners of the communication problems committed to them; would make for orderly procedure and harmony of decision; and would speed up the disposition of cases before the commission and the divisions thereof.

The bill in the lower house to reorganize the FCC was introduced by Representative Sanders, Democrat of Louisiana. It is quite similar to that introduced by Senator White—the difference being that Representative Sanders' bill would provide for a study and report on certain controversial phases of radio regulation, whereas the White bill would proceed to legislate upon these controversial items forthwith.

BOTH Senator White and Representative Sanders, however, are apparently in agreement that Congress, not the FCC, should decide questions of basic policy in the field of communications regulation. To this end the White bill, in addition to divorcing regulation of common carriers from radio broadcasting, would prohibit the FCC from interfering with the character of radio program material and the so-called "business phases" of the broadcasting industry.

This would apparently eliminate the power of the commission to take such drastic steps as were indicated in its recent orders curbing radio networks, and its pending inquiry into press-radio relationships.

The White bill would further liberalize appellate procedure and the opportunities of parties to be heard before the FCC. It would regulate, equalize, and identify broadcasts dealing with political or controversial questions, and it would clarify a number of other controversial sections of the present Communications Act. No early action was expected on either the White bill or the Sanders bill. However, it will be recalled that the Senate Interstate Commerce Committee has pending a resolution introduced by Senator White to investigate radio regulation under the FCC. It is unofficially reported that the chairman of the Senate Interstate Commerce Committee, Senator Wheeler, Democrat of Montana, is favorably disposed towards such an inquiry and will name a subcommittee very shortly.

Washington speculation was to the effect that such a subcommittee, in making its report, might either recommend the adoption of the White bill or write some similar bill of its own. The House Committee on Interstate and Foreign Commerce, to which the Sanders bill was referred, would probably wait further developments in the upper chamber.

* * * *

THE chief signal officer of the Army, Major General Joseph O. Mauborgne, who is also a member of the Defense Communications Board, will retire from the Army September 30th. Brigadier General Dawson Olmstead, commandant of the Signal Corps School at Fort Monmouth, New Jersey, has been designated acting chief signal officer during the absence of General Mauborgne. Brigadier General George L. Van Deusen, commandant of the Fort Monmouth Signal Corps Replacement Center, will become commandant of the Fort Monmouth school during General Olmstead's service in Washington.

It is rumored that General Mauborgne, after his retirement from active Army duty, will be called upon by defense authorities in Washington to participate in

an important rôle in communications preparedness for national defense.

* * * *

PUBLIC utilities are becoming modern Paul Reveres. Three forms of utility service in the average household are capable of acting as warning devices in time of air-raid alarms and for other purposes. This has been demonstrated by experiences in war-torn Europe and by recent demonstrations here in America. The telephone, of course, is the obvious means of letting the population know quickly when something is wrong. It is especially valuable for outlying areas where homes are beyond earshot of sirens and other central alarm systems employed within city districts. Code ringing can give "alerts" and "all-clear" signals without even answering the phone. But not every household has a telephone —especially in Europe.

For this reason there have been experiments in Sweden with sending a special electric impulse along the electric wires that would set off an alarm receiver designed to operate when the warning "surge" of current comes over the wires. This use of electric wiring does not interfere with the regular service or cause any harm to regular electric appliances.

Recently, at the LaGuardia airport in New York city, David Sarnoff, president of RCA, introduced a device known as the RCA alert receiver, that turns on automatically when it receives a special inaudible signal from a broadcasting station, rings a bell to summon listeners, and then shuts off when an all-clear signal is flashed. The alert receiver is about the size of a portable radio set and can be incorporated into standard broadcast receivers or television sets so as to make them responsive to the robot signal.

* * * *

THE Washington Department of Public Service is planning to appeal to the state supreme court from a recent lower court decision rejecting the department's $1,000,000 telephone rate reduction order. Over a year ago the Pacific Telephone & Telegraph Company proposed to increase intrastate toll and exchange rates. The commission, after a statewide rate investigation, not only denied the proposed increase but ordered a net reduction in the company's revenue by approximately $780,940. This net reduction was arrived at by allowing an increase in toll rates of $272,563 and at the same time ordering a cut in exchange rates of $1,053,533.

In its decision handed down on July 19, 1941, the Washington Superior Court ordered the Washington department to permit an increase in rates calculated to yield a return of approximately 6 per cent on an adjusted rate base. The commission had allowed a return of only 5.5 per cent on a more restricted rate base. The court ruled that accruals for pension funds and "reserve fees" paid by the company to its parent, the American Telephone and Telegraph Company, should have been included in the rate base. Failure to recognize reproduction cost less depreciation in determining the value of the company's property was also held to be an error.

* * * *

NATION-WIDE plans to use standard broadcasting stations for air-raid warnings and other messages, communiques, and announcements in the event of military emergency were outlined on August 8th by the Defense Communications Board through James Lawrence Fly, chairman of the DCB and of the FCC.

The chairman emphasized that broadcasting would remain in private hands and that all utilization of broadcast facilities would be on a coöperative basis except for possible areas of actual combat. The defense studies have been made in considerable part by the industry itself.

Also announced were protective safeguards designed to insure continuous operation of broadcasting stations under emergency conditions. The DCB found the broadcasting structure well adapted to air-raid warning and similar uses, but noted certain remedial shortcomings still to be overcome.

Present plans, now under joint consideration by the DCB and the Office of Civilian Defense, were reported to be concerned with ways of linking broadcast stations to local civilian defense centers for instantaneous receipt of local and regional warnings, announcements, etc. In addition, a potential nation-wide supernetwork is available for messages of national scope.

Current reports to the DCB indicated that of approximately 880 standard broadcast stations in operation, nearly 500 are already connected to the potential supernetwork carried on telephone lines. An additional 132 have studios in cities now served by the supernetwork, so that only local links need be secured; and 240 are located along the lines of the supernetwork and so can be tapped in. Only 12 stations in the country are located away from the regular program lines; and these can be hooked in for emergency announcements, etc., by means of ordinary telephone interconnections. Thus substantially every broadcasting station in the country can be promptly utilized for military or civilian defense message broadcasts. The program transmission network is also available for instantaneous warnings to a particular station that it is in danger of becoming a beacon for enemy aircraft.

DCB surveys indicate that even with every station in the country tied in for emergency broadcasts, certain rural areas would be without reliable reception, especially during daylight hours and during summer months in the southern states.

Various plans for providing reliable broadcast service to such areas were said to be under consideration. The DCB noted that all urban areas are adequately covered for emergency defense communications, and that few towns with a population of more than 25,000 are without local broadcasting stations.

* * * *

THE Federal Communications Commission on August 5th proposed that no firm be permitted to own more than one standard broadcast station serving a single territory. The commission called for oral argument on the proposal on October 6th. It invited all interested persons to file briefs.

Officials said they did not know how many stations would be affected. They interpreted the proposal as requiring the disposal of stations in all cases where more than one is controlled by the same interests in any locality.

The commission expressed the opinion that public interest, convenience, and necessity "may be served by prohibiting such multiple operation." The commission already limits ownership of frequency modulation stations to one in a locality, with a limit of six stations regardless of location.

* * * *

A COMPLETE ban on the use of international wireless telephone service by anyone unable to prove his message was on official government business was recently reported to be among additional national security measures under consideration in high quarters. Such a ban would force all international traffic either to illicit radio transmitters, easily tracked down with modern equipment already in use, or to the commercial wireless and cable companies, on which the U. S. Navy seeks legislative authority to apply a censorship on all incoming and outgoing messages.

Navy censorship on the cable and wireless companies would be relatively useless without some control over the international wireless telephone system, and the ban on the use of the telephone apparently is being considered as the final segment in a defense move to give the government complete surveillance over communications going in and out of the country.

Freshness of bits of military information, as the Army and Navy have pointed out repeatedly, is the all-important element in espionage work, and government control of all rapid communications facilities would force foreign agents here to use much slower and devious methods of transmitting any information they might obtain.

Financial News and Comment

By OWEN ELY

FPC Power Program Might Bankrupt Utilities

In its March, 1941, estimate of electric power requirements and supply, the FPC stated that "even on the basis of the unrevised December estimates of 1942 demand, it now appears that the 5,751,615 kilowatts of new capacity scheduled for operation in 1941 and 1942 will fall some 570,000 kilowatts short of meeting the expected demands in certain areas. This deficiency is likely to rise to 1,400,000 kilowatts as a result of expansion of the defense program since those estimates were prepared." The commission criticized some of the statistics sent in by the utilities, indicating that the figures for "assured capacity" were now being padded by assigning higher capacity values to existing facilities, or decreasing necessary operating reserves.

The present United States electric capacity is estimated at about 43,000,000 kilowatts, to which the utilities have already committed themselves to expansion plans which (plus government hydro plants) will add the following capacity:

Apr. 1, 1941-Dec. 31, 1942	5,751,615 kw.
Year 1943	1,146,000
Year 1944	165,000
Year 1945	300,000
Total	7,362,615 kw.

The commission urged that immediate orders be placed for additional equipment since two to three years are required to complete manufacture and installation of generating facilities—perhaps even longer under defense conditions.

The implication of the commission's report was that the private utilities should increase their expansion program. However, it became apparent that various government agencies were quite ready to do the job if the utilities showed any hesitation. In fact, considerable rivalry has been reported behind the scenes in Washington for the post of "power dictator."

(See page 298.)

The President is using every means to revive his pet power project, the $300,000,000 St. Lawrence seaway, as a last device throwing it into the Rivers and Harbors "pork barrel" bill. Almost all the New Deal agencies are trying to get a finger in the power pie. Aside from purely public power schemes, however, the FPC plan is the most ambitious program, completely dwarfing the St. Lawrence.

In his report to the President dated July 16th, Chairman Olds stated:

> This plan is today based on the necessity of preparing for defense expenditures which, by 1943, will be running at $3,000,000,000 per month. Translated into power, this means a defense load of approximately 20,000,000 kilowatts, of which 11,000,000 kilowatts is assumed to represent displacement of normal loads.

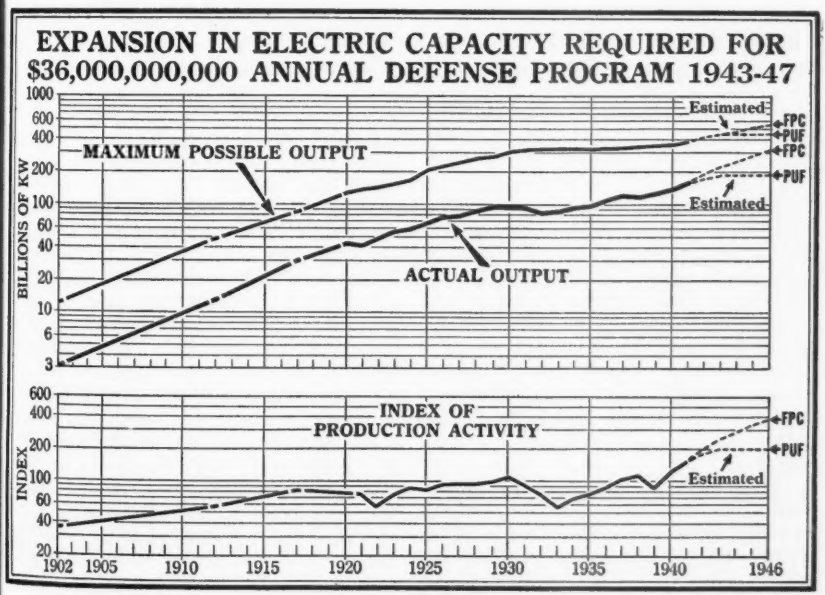
The FPC wishes to make *immediate* plans for five years' capacity production of commercial generator units, with financial commitments handled through an RFC subsidiary (in coöperation with FPC) to assure such output. Both public and private utility agencies would place their orders through RFC, either for direct purchase or "lease purchase." The construction program would include 2,500,000 kilowatts in steam plants and 1,000,000 kilowatts in hydro plants per annum, the latter to be built and owned by government agencies under control of FPC.

The present private and public power program for 1941-42 agrees fairly well with the FPC program of adding about 3,500,000 kilowatts per annum; hence, the FPC would apparently take over the expansion program about the middle of 1943 and continue through 1946. Under these combined programs United States electric capacity would be increased nearly one-half by 1946, to around 62,500,000 kilowatts.

The accompanying logarithmic chart compares the actual output of electricity since 1902 with maximum possible output and with an index of industrial production. (Census figures are used for 1902, 1912, and 1917, these years being connected by trend lines; beginning 1920 the annual FPC figures are charted.) "Maximum possible output" means total capacity multiplied by 8,760, the number of hours in a year, representing the total billions of kilowatt hours which could be obtained if all plants were operated continuously. (Such operation would, of course, be impracticable, and the figures are merely used for statistical purposes to reflect the over-all margin above actual output.)

In 1902-12 actual output was only about one-quarter of maximum possible production; in 1917 the ratio changed to about one-third; and, with some variations due to changes in construction policy, this ratio continued to apply through 1939. In 1940, however, industrial activity went to new high levels and many plants began running overtime shifts which helped to distribute the load —reducing peak load in relation to average demand for power. Thus in March, 1941, average United States use was about 40 per cent, and the "sum of noncoincident peaks" about 62 per cent, of maximum kilowatt capacity. The only serious "bottleneck" at present is in special areas such as TVA territory, where huge aluminum demands on hydro plants have coincided with a drought and other adverse conditions. This situation is being alleviated by greater interconnection with northern systems.

While Mr. Olds' figures are not very detailed, he evidently assumes that



the ratio of output to maximum possible power can be further increased to 58 per cent by 1946, which seems a reasonable assumption, considering that many factories will be operating almost continuously. The principal trouble with Mr. Olds' plan, as we see it, is the assumption that the supply of current must increase some 90 per cent in the five years ending 1946—on top of the present wartime increase of 28 per cent; that such an increase will be necessary to provide power for a $36,000,000,000 annual defense program.

In the chart we have tried to extend the FRB business index through 1946 in the same approximate relation to electric output (as envisaged by the FPC) which it previously exhibited, and thus reach the amazing figure of 388 for the index (now at 162). Such results call for careful statistical analysis.

In our opinion a $36,000,000,000 defense program can be fitted into a $100,000,000,000 national income by the proper use of priorities, drastic reduction of heavy consumers' goods, etc. The $100,000,000,000 level would conform approximately to the 200 level for the FRB index as foreseen by Leon Henderson. The defense program has already passed the $1,000,000,000-a-month level; of the necessary $2,000,000,000 more, probably half should be taken care of by proration and curtailment. On this basis, therefore, the index should gain about as much again as it did in the year 1941—which method again works out at about a 200 top. It is likely that strikes, car shortages, raw material difficulties, and other bottlenecks, constantly recurring in new quarters, will tend to keep the index from advancing much above that level; and some doubt remains in the writer's mind whether we will even attain the 200 level in the present cycle unless there is a radical change in administration labor policies.

Accordingly, even if the maximum defense effort continues through 1946, the business index seems likely to level off around 200 and continue to fluctuate around that figure. Correspondingly, we think that electric output could also be stabilized around 190,000,000 kilowatt hours per annum—31 per cent over last year's level—and still take care of the $36,000,000,000 annual defense program. Many readjustments in the present load can easily be made if and when needed, such as increased daylight saving (used in England), curtailment of display lighting, etc.

As indicated in the chart, electric power output gained rapidly as compared with the rate of industrial production during the first three decades of the century; but since 1930 it has shown a fairly steady relationship to industrial activity except that in very bad years like 1932 and 1938 the stabilizing factor of residential consumption tended to bolster the electric output. At the present time there is about the same relation between output and business activity as in the period 1935-37. It would seem unnecessary to change this relationship except for temporary or "bottleneck" needs, particularly as much defense work is done on an overtime basis, which reduces the average peak load. Moreover, residential load will increase at a much smaller rate than the industrial load during the war period.

We have, therefore, extended the estimates for 1941-46 in the accompanying chart as two diverging lines (in each of the three factors)—the upper line in each case reflecting our interpretation of the FPC plan, and the lower our own estimate of what is required to handle the defense program. On the revised basis (the lower dotted lines) it seems only necessary to round out the utilities' present program through the year 1943—providing about 2,350,000 more kilowatts' capacity in that year or in 1944 than is already contracted for.

There are grave dangers under the FPC program of overbuilding our electric capacity. It may take our peace-time activity a decade or so to catch up with the FPC estimate of defense needs. And unless the government directly foots the bill as a war cost, the utilities may be financially crippled for years to come

after the war. If the government *does* foot the bill, it will have such a large stake in the utility plant as a whole that government ownership of all utilities would be an inevitable post-war temptation.

Mr. Hoover has been criticized for his program of combating the last big depression, when he persuaded the utilities to add 2,500,000 kilowatts' capacity in 1930 and 1,300,000 in 1931; by so doing he not only discounted the needs of future years, but "wasted his ammunition" on the depression too soon. During the ensuing five years capacity increased at an average annual rate of only 240,000 kilowatts.

If there is no need for utility building, an important section of our construction industry would be dormant after the end of the war. This industry is our balance wheel against depression. Of course, we do not want to handicap the defense effort, but nevertheless some thought must also be given to post-war problems. Why not wait another year before committing the utilities to this gigantic financial program? There will still be plenty of time then to contract for 1944 deliveries, and the world situation may have clarified in the meantime.

That the defense needs cannot be definitely forecast for more than two and a half years ahead should be quite clear to anyone who has followed the rapidly shifting program of the past year, as well as the present tempo of European events. It would seem good judgment to round out the 1943 program, from the 1,146,000 scheduled production to the 1941-42 annual rate of 3,000,000, bringing the total to 51,500,000 kilowatts. There can also be no objection, of course, to FPC paper plans, similar to the theoretical war plans of the General Staff, to meet all contingencies; but a program of financial commitments beyond 1943 seems extremely hazardous to the utility industry, which eventually must bear the greatest part of the burden, even though the RFC remains a lenient lender.

Chairman Olds has apparently estimated the cost of his proposed 1943-46 program at $2,350,000—this is the figure publicized in *Time,* for example. The figure may sound almost negligible compared with the vast sums to be spent for national defense, but it represents only part of the total cost of the utility program.

In the past decade the cost of steam and hydro stations averaged only about one-third of the total cost of construction. On this basis the total sum—including substations, transmission, distribution, etc. —might amount to $1,400,000,000 a year, or $5,600,000,000 for the 4-year period 1943-46. Moreover, it seems somewhat doubtful whether generous allowance has been made for rising prices and wages. Also, this 4-year program comes on top of a similar 2-year program by the utilities themselves covering 1941-42.

The construction budget for this year (excluding government hydro projects) is about $731,000,000 and doubtless will be much larger next year, though it is always difficult to estimate kilowatt construction costs in view of the wide variations from year to year.

Thus the total war-time construction budget for 1941-46 might well exceed $8,000,000,000 of which the government might spend about $1,000,000,000. Of the remaining $7,000,000,000 only about $2,400,000,000 could probably be provided by the utilities from depreciation and earnings,* leaving $4,600,000,000 to be obtained from investors or the RFC.

Considering the present position of the industry, it seems unlikely that the private industry's share of this could be raised from junior capital—most of it would be added to funded debt despite the fact that the SEC is already criticizing the industry for having an excessive debt structure. To carry out the program would involve as much as 50 per cent increase in the funded debt of the utilities, thus risking the danger of bankruptcies in any severe ensuing de-

*In the past five years expenditures from depreciation and earnings have averaged about $400,000,000. (See FORTNIGHTLY, May 8th, p. 613.)

pression. This is not the whole story. Interest rates will probably soon be rising—in fact, Leon Henderson favors a rise as one means of fighting inflation. While the RFC may be helpful, nevertheless the interest burden, with rising money rates, might prove extremely onerous. In other words, the utilities' present declining earnings trend would be further accelerated, and whatever current hopes might exist for junior financing would become still more remote—possibly putting the utilities in the same class with the railroads, in a downward spiral of reorganizations, unless state commissions came to the rescue with substantial rate increases.

American Power & Light Accedes to SEC Views

In order to avoid difficulties under the proposed SEC rule which would end interest payments by an operating utility to its holding company, Florida Power & Light on June 1st cleared up its large dividend arrears on the first preferred stock. However, this did not satisfy the SEC which, on July 10th, called a hearing for September 15th to determine whether the Florida subsidiary should revise its property account, and whether American Power should not give up its present holdings of bonds and first and second preferred stocks, with some readjustment of its common equity.

On August 8th American Power & Light announced that it was prepared to deliver its holdings of senior Florida Power & Light securities for cancellation, as suggested by the commission, thereby decreasing the latter's capitalization from $93,000,000 to $70,000,000. They also proposed a refunding program for Florida whereby the publicly held $52,000,000 5 per cent bonds and 142,667 shares of $7 preferred stock might be retired through proceeds of sale of $70,000,000 new bonds, serial notes, and preferred stock.

American Power & Light requested postponement of the SEC hearings until September 15th or later. Since the SEC has already made a rather careful historical study of the Florida Company's accounts, the principal questions for decision would seem to be the amount of the required write-off in the property account, the stated value to be assigned to the new common stock, the number of shares to be held by American Power, etc. Judging from the expeditious handling of the similar Commonwealth & Southern-Georgia Power Case some months ago, there seems to be no reason for protracted delay in clearing up this troublesome section of the Electric Bond and Share picture.

It is barely possible, however, that the SEC might raise some difficulties regarding future payments of common dividends by the Florida Company to American Power, which would naturally hope to receive such dividends as a substitute for the present interest and preferred dividends. Two possible reasons might arise for such an embargo: (1) an excessive funded debt ratio to total capital or to net property account, and (2) inadequacy of depreciation charges.

In its press release of July 11th regarding the calling of hearings (page 3), the SEC stated:

> The aforementioned securities and properties received by Florida were placed on its books at the sum of $64,523,013. This sum was $33,885,993 in excess of the cost thereof to American and Bond and Share.

	Present Capitalization		*Proposed Capitalization*	
	Millions	*% of Total*	*Millions*	*% of Total*
Funded debt	$74	81.5%	$52.0	57.3%
Preferred stock	25.9	28.6	14.3	15.7
Common stock & surplus	D9.1	D10.1	24.5 est.	27.0 est.
Total	$90.8	100.0%	$90.8	100.0%

D—deficit.

> The plant and investment accounts of Florida were thereby inflated by the amount of such excess. . . . It appears that additional inflation in amounts of approximately $2,180,000 in 1926 and $4,000,000 in 1932 has been introduced into plant and investments in connection with acquisitions and additions, with the result that the total of such inflation at December 31, 1940, apparently equaled at least $40,065,993.

On page 6 the SEC presented a table of the capital structure as of December 31, 1940, after adjusting for a write-off of $40,063,993. Two columns are here added to show the possible new set-up under the proposed changes agreed to by American Power & Light (page 296).

The commission also pointed out (page 6) that the company's reserve for depreciation as of December 31, 1940, amounted to only $4,977,558, which figure was $21,490,691 less than the reserve would have been had the company accrued an amount equal to the sums allowed or claimed for depreciation in Federal income tax returns. If the SEC should insist on a further adjustment being made to set up such an increased reserve, this would produce the following result based on the new capitalization:

	Millions	*% of Total*
Funded debt	$52.0	75.0%
Preferred stock	14.3	20.7
Common stock & surplus	3.0	4.3
Total	$69.3	100.0%

To write down the net property account of the Florida properties from approximately $131,000,000 to $61,000,000 ($40,000,000 for so-called inflation and $21,000,000 for increased depreciation reserves) would seem much too severe. It is likely that the SEC and the company will work out a compromise figure. However, even if the amount is limited to the "inflationary" item of $40,000,000, the reduced funded debt will still constitute over 57 per cent of total capitalization as compared with the commission's ideal figure of 50 per cent. It remains possible, but not probable, that the commission might order the company to apply all future earnings to surplus, declaring no common dividends until such time as surplus was increased sufficiently to reduce the funded debt proportion to 50 per cent.

As regards the current ratio of depreciation and maintenance to gross revenues: For the year ended June 30, 1941, retirements (depreciation) amounted to 11.8 per cent of gross. The amount of maintenance expense was not reported. No figure for maintenance is available for the year 1940 but in 1939 maintenance was 5.6 per cent of revenues and depreciation 9.8 per cent, making a total of 15.4 per cent. This seems to conform to the minimum standard of the SEC, although it has never indicated a definite percentage.

However, a difficulty may arise from the fact that the company has been claiming very large depreciation charges in its tax reports to the Treasury Department. In 1939, 17.47 per cent of revenues was claimed, compared with the 9.97 per cent in the report to stockholders. At one time it was rumored that the SEC would compel the utilities to report to stockholders on the same basis as in the Federal return. Obviously, this would raise considerable difficulties with net earnings in the case of Florida. However, 17.47 per cent is considerably higher than the general average in practice among utility companies; a few years ago 10 per cent was considered reasonable; at present around 12-13 per cent. Hence this difficulty could probably be compromised between the commission and the company, with perhaps a moderate increase over the present 11.8 per cent depreciation charge.

Summarizing, American Power & Light has made such important concessions to the SEC viewpoint that the latter may, for the present at least, be content to overlook or to compromise the remaining difficulties regarding capital structure, depreciation, etc., in the case of Florida Power & Light. In any event continued difficulties in obtaining income from Florida might be solved by American Power's offering the new common stock in exchange for its own preferred stock, which would automatically end the holding company status and permit Florida to pay common dividends without seeking SEC permission.

What Others Think

Does the Nation Need a "Power Czar"?

As the month of August wore on, it became increasingly clear to Washington observers that much of the earlier discussion about a national power "czar" would have little basis in fact. The reason: The coalition between the Office of Production Management and the Federal Power Commission over the coördination of the nation's electric supply with the national defense program.

Prior to this coalition, there had loomed a 3-way fight between OPM, FPC, and Secretary of Interior Ickes to seize administrative control over the nation's power reserves.

Secretary of Interior Ickes had been suspected of planning to become "national power czar" through presidential proclamation. But whether papers had ever been prepared to that effect, the fact remains that while FPC and Secretary Ickes were still trying to jockey each other out of position, OPM's able and aggressive young power consultant, J. A. Krug, jumped into the driver's seat.

It later developed that, thanks to some collaboration with FPC, he will probably stay there; although those who know Secretary of Interior Ickes say the latter will not give up, without a struggle, his determination to have a voice in the control of the national power reserves.

DOES this mean that Mr. Krug will be the new "czar"? Hardly. The combination of OPM and FPC is a logical one. It will be the FPC's task to plan for the future development and utilization of power reserves. It will be OPM's responsibility to carry out its priority rationing of scarce materials so as to weave such planning for the power industry into the national defense pattern to the extent that it can be accomplished. Thus, it would seem that the OPM-FPC strategy will amount to a division of the responsibility along reasonable lines, rather than a concentration of control under a single head (as would have been the case if Secretary Ickes had obtained control).

There has been much back-of-the-scenes gossip concerning this recent maneuvering. Rumor has it that TVA's Lilienthal (who has looked with suspicion for some time on Secretary Ickes' ambitions in the field of power administration) was the common denominator which brought together FPC Chairman Olds and OPM's Krug—the latter a former TVA engineer, well known to Lilienthal.

Be that as it may, Mr. Krug proceeded to consolidate OPM's position by having OPM create a special agency to handle all defense-power problems. This is headed by Mr. Krug.

The FPC had already taken decisive action to head off the necessity for appointing any "power czar" by recommending an ambitious 5-year plan for government ordering and allocation of capacity generator production. Doubtless, this FPC plan will undergo some modifications under OPM-FPC administration in actual practice.

MR. Krug's staff will include representatives of private industry, as well as those of government power agencies. Specifically, private utility men are Philip Sporn of American Gas and Electric, J. Moore of Electric Bond and Share, E. W. Morehouse of Associated Gas and Electric, K. M. Irwin and Constantine Bary of Philadelphia Electric, John C. Parker of Consolidated Edison Company, and Fred Schaff of Superheater Company. The two last-named officials will handle priority matters, both of raw materials for operations and of gen-

erator capacity to meet defense requirements.

The FPC will tie into the new OPM agency through the assignment of three FPC staff members to coördinate the activities of FPC and the work of Mr. Krug's agency. These include the FPC general counsel, William S. Youngman; Walter E. Caine, rate expert; and George H. Buck, defense engineering.

Because of some fear on the part of the private industry that the original FPC "5-year" plan would be used as a vehicle for promoting public ownership, the first reaction of the electric industry to the new OPM-FPC combination was one of suspicious caution. They preferred the domination—if there had to be domination—of the FPC as the lesser of two evils, in view of the more forthright radical antiutility tendencies heretofore exhibited by Secretary of Interior Ickes.

More recently, however, there has been increasing disposition to accept at its face value Mr. Krug's statement that he is principally concerned with getting the job done. In other words, Mr. Krug is being represented as preferring to deal realistically with the electric power situation through a combination of existing organizations, meaning a partnership between public and private power and a cessation of the drawn-out quarrel between the two interests.

Electrical World, trade publication of the electric industry, editorially stated in part:

> The industry should accept this move as constructive, for it takes power planning, for the time being at least, out of the hands of Mr. Ickes, who has wanted to be the czar of the power industry. Furthermore, the new power unit head is adding to his staff some of the best forecast analysts in the power industry. This in itself is an assurance that any planning for future power expansion will be based upon estimating procedures that have long been recognized by the power industry as sound.
>
> The announcement . . . by FPC of an expansion program through 1946, though detailed by station and units, is to be taken more as an indication of the possible scope of the program for added capacity than actual installations to be ordered. It has been felt for some time that action should be taken to prevent any diminution of land turbine manufacturing capacity. The encroachment that is feared is, of course, the Navy. Less mental disturbance on the part of FPC and the manufacturers, it seems to us, might have resulted had the Navy and FPC jointly arrived at an allocation of factory space between water and land units.
>
> Although the shock of seeing what appeared to be an outright usurpation of management duties was strong, it should have been realized that it is impossible for mortals, at least, to forecast for 1945 and 1946 the size and location of units, the load for which has not yet been conceived.
>
> This is recognized in the new OPM power unit, which has started to evaluate future power requirements regionally. Even FPC, which is coöperating with OPM, is cognizant of this situation for it has announced its intention of discussing these future requirements with each of the companies involved.

An editorial in the *Engineering News-Record* showed more caution, especially about the FPC plan:

> Today citizens are asked to put the needs of defense ahead of their personal or group welfare. Under such circumstances, the administration and its agencies should be most careful to avoid even the appearance of using national defense to advance their pet hobbies. Yet the Federal Power Commission has no such compunction. It takes all the administration's pet water-power projects, supplements them with a very plausible looking list of steam stations to be built by private electric utilities, wraps them in the flag, and presents them as necessary to national defense.
>
> If J. A. Krug, the newly appointed OPM Coördinator of Defense Power, will only strip the flag off this package when it arrives on his desk he will be putting deeds behind his appeal to the electric utilities to push old controversies into the background. Certainly, by asking the utilities to accept its vast program of public power development as a patriotic duty, the Federal Power Commission has pushed the oldest controversy—public *versus* private power development—right up into the foreground.

The FPC's plan is to increase the nation's generating capacity by one-third or some 13,400,000 kilowatts. Based on the assumption that defense expenditures by 1943 will be running at the annual rate of $36,000,000,000, necessitating a 30 per cent reduction in present civilian power consumption, the program would bring in 2,500,000 kilowatts of new steam and 1,000,000 of new hydroelectric capacity each year from 1943 through 1946. Since

private and public construction already scheduled will add about 8,000,000 new kilowatts in the next three years, the FPC plan would raise capacity by the end of 1946 to around 63,000,000 kilowatts—more than double that of 1929.

THE detailed schedule for the roughly $2,000,000,000 project lists 111 proposed steam plants scattered throughout the country and 73 hydroelectric generators requiring 55 new dams. The St. Lawrence area is included for a 900,000-kilowatt unit, making the gigantic seaway project look by comparison like a drop in the bucket hardly worth arguing about. The report urges that orders be placed immediately so that equipment manufacturers may operate at capacity from now on and suggests that responsibility for placing and financing the orders be assumed by an RFC-financed government agency. Private utilities would have an opportunity to make commitments directly or on a lend-purchase basis for any unit planned for their respective systems.

Commenting on the significance of this plan, the magazine, *Newsweek*, stated:

> Actually the utilities are now adding capacity at the same annual rate suggested by the FPC report but, as prudent management dictates, aren't looking much more than two years ahead. The FPC is promoting its sweeping plan as a way to help them reach farther into the future and, incidentally, ease the path for the St. Lawrence project. Reluctant to expend capital on the basis of hypothetical regional demands five years from now, utility men, however, are faced with this dilemma: Hanging back would increase government competition while acceptance of Federal aid might lead to even tighter regulation. As a result the industry, as the President predicted . . ., probably will undertake much of the expansion itself and worry about excess capacity when the time comes.

BUT there is another phase of the FPC's program which is causing concern in a different quarter—the state utility commissions. Best evidence of this is the replies to a telegram sent by *The Wall Street Journal* to 45 state utility commissions. Twenty-four of these commissions responded, and their replies were published in *The Wall Street Journal* of July 24th.

The *Journal's* telegram asked the state commissions to comment on the following:

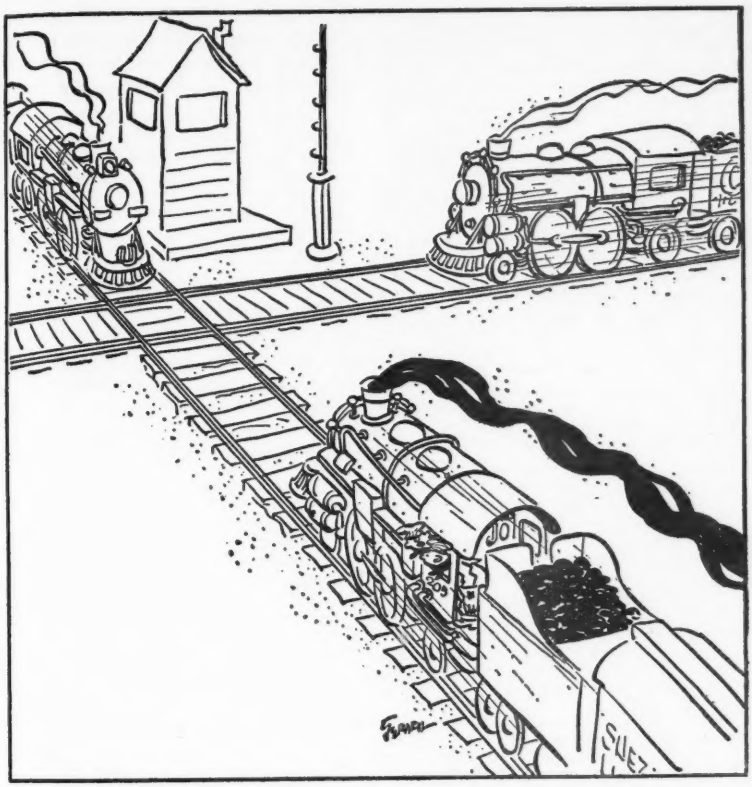
> The proposed power expansion program just submitted to President Roosevelt by the Federal Power Commission gives that Federal agency full control over the future expansion of the electric power and light industry. Do you believe that new authority would be an invasion of the prerogatives of state regulatory authorities?

Ten of the state commissions simply acknowledged receipt of the telegram, but declined to volunteer comment, either because of lack of regulatory jurisdiction in their states or on the ground that the information on the subject was too incomplete to warrant a definite statement (Alabama, Florida, Kentucky, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, Pennsylvania, and Washington).

The majority of those state commissions, which did respond to the *Journal's* question on its merits, indicated considerable disturbance over the possibility of encroachment of state regulatory powers by the FPC. The two most critical statements came from the respective chairmen of the Georgia and North Dakota commissions—whose names, by coincidence, both happen to be "McDonald."

Walter R. McDonald of the Georgia board said that he was "definitely of the opinion that the proposed power expansion program submitted to the President by the Federal Power Commission . . . would be an invasion of states' rights and a serious infringement on state commission jurisdiction." S. S. McDonald of North Dakota said that his commission was "absolutely 100 per cent opposed to proposed power extension of the Federal Power Commission. New authority would be an invasion of the prerogative of state regulatory authorities and we are unanimously opposed to it."

ON the side of those who expressed no fear of FPC encroachment and indicated a generally favorable attitude toward the Federal board's expansion program, were only two spokesmen for state commissions—Leon Jourolmon,



Courtesy, Nation's Business

"BY HEAVEN, THIS IS DRAMATIC. YOU KNOW IT!"

Jr., acting head of the Tennessee commission, and Nelson Lee Smith, chairman of the New Hampshire commission.

Chairman John D. Biggs of the Illinois commission stated, somewhat cautiously, on the basis of available information, that the FPC program would not necessarily take away any powers from the Illinois commission. "We assume," said Chairman Biggs, "that the recommendations for additional generating capacity will be subject to discussion as to location and necessity." He also expressed the hope that the FPC and the Illinois commission would be able to reach an understanding through coöperation on any difference of opinion.

Commissioner Jourolmon's response on behalf of the Tennessee commission was considerable for a telegram. It follows:

> The United States is now committed to an all-out effort to overcome the dangers of world domination by the Axis power. It is useless to undertake such an effort if a few utility magnates are going to hamstring the production of essential war materials by niggardly and lethargic expansion plans. If utility companies are going to raise the hue and cry of invasion of state regulatory prerogatives as a specious excuse for resisting the emergency proposals of the Federal Power Commission, this will amount in effect to aid to the Axis military policy of dividing and encircling. Through such a policy the nation's power production facilities would be split up into forty-eight weak sectors incapable of effective and united action. The Federal Power Commission is seeking no

new authority not already expressly given it by Congress six years ago. Section 202 (c) of the Federal Power Act provides: "During the continuance of any war in which the United States is engaged, or whenever the commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, . . ., the commission shall have authority . . . to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest." So long as this nation remains united as one Federal union, such a provision will be necessary in any war-time or emergency period. State regulatory authorities were not constituted for the purpose of waging war or coping with national emergencies, although they can use their prerogatives in order to assist greatly our country in any such time of crisis. The Federal Power Commission is earnestly and irresistibly going about the business of insuring this nation's industry of adequate supplies of electric energy in order to meet the increased requirements of the present period of emergency. This does not invade the prerogatives of this commission or of anybody except the masters of Nazi-dominated Europe.

The endorsement by Chairman Smith of New Hampshire was somewhat more restrained. He said:

> On basis information thus far available see no danger of invasion of prerogatives of state regulatory authorities in Federal Power Commission proposal re expansion power facilities. In any event believe needs of national defense paramount and petty quibbling over jurisdictional issue dangerous in present emergency.

In addition to replies from Georgia and North Dakota already mentioned, nine other state boards expressed either outright or qualified opposition to the idea of extending FPC jurisdiction to cover future expansion in the electric industry: Arizona, Arkansas, California, Colorado, Montana, Ohio, Oregon, Virginia, and Wisconsin. Thus, by way of summary of *The Wall Street Journal's* telegraphic symposium, the score would seem to be 11 to 3 in favor of the opposition.

Chairman George McConnaughey of the Ohio commission ventured an alternative suggestion to the effect that the OPM, rather than the FPC, should be given the responsibility for requiring more power for defense. He stated:

> It is perfectly apparent new authority suggested by Federal Power Commission would invade regulatory rights of states, but what is more important it takes away from private companies proper managerial judgment which if hampered would delay defense program most seriously. United States War and Navy departments and Office of Production Management should be given authority to require of power companies needed increase in generation and steam plant capacity.

Ormond R. Bean, the commissioner of public utilities for Oregon, stressed the need for coöperation between the Federal government and the states, rather than centralized control. He said:

> Our effort has always been toward full coöperation with that and other Federal agencies in long-range planning. We believe that any move giving an outside agency exclusive authority over development of the vast power resources of this state and future expansion of the industry would be a serious invasion and would relegate state control to a secondary position. Oregon's enviable position both as to present generating capacity and exceedingly low rates available statewide offer no excuse for superseding state authority. We favor long-time planning but feel that states are vital units of this planning and that we are ignored and forced to accept decisions which should have local consideration. We hope Congress will recognize the importance of state control of local problems and not permit state regulation to be destroyed.

A similar thought was expressed by Chairman Ben E. Carter of the Arkansas commission:

> Believe it unwise as a matter of policy to try to run all the business of the country from Washington. Federal Power Commission has been very coöperative and helpful but this country is too big and its various interests are too diverse and too conflicting for any one commission to be able to regulate wisely the entire power industry. It is not a question of invading the prerogatives of the state regulatory authorities, but of whether this country can continue to exist if we are all forced into the same mould except in matters where uniformity is absolutely necessary and do not know that this necessity exists in the power industry.

Coöperation between regulatory au-

thority and the power industry is another angle of the situation requiring careful consideration, according to C. C. Baker, president of the California commission. He stated:

> There is no power deficiency in California. This is due to far-sighted planning policy involving close coöperation between state and Federal agencies, together with executives of distribution systems. The Federal "full control" proposal would undoubtedly precipitate complications involving delays, duplications, waste, etc., and be far less effective towards attainment of desired objective. A continuation of present policy would insure adequate power supply and service under increasing demands with minimum of confusion as to regulatory practices. In my opinion the proposed extension of Federal agency authority would constitute an "invasion of the prerogatives of state regulatory authorities" and that exercise of the proposed Federal "full control" would tend to defeat the declared purposes thereof.

More general expressions of opposition came from still other state commissions. The Arizona commission pointed out that "any legislation which would deprive states of exclusive and unlimited power to regulate and control intrastate operations of utilities, including expansion and development, would be fraught with dangers and would, therefore, be prejudicial to the public welfare." Henry S. Sherman, chairman of the Colorado commission, said that he did not "believe Federal Power Commission should have sole control over future expansion of electric power and light. State regulation should be preserved."

Chairman Thomas W. Ozlin of the Virginia commission said that "clearly it [the FPC program] is an invasion and so far as Virginia is concerned wholly unnecessary and cannot be justified as serving any public interest." Chairman Peterson of the Wisconsin board stated his belief that on the basis of incomplete information the proposal would seem to be a "serious invasion of state regulatory authority."

Chairman Austin B. Middleton of the Montana commission pointed out that the FPC program would not invade Montana regulatory authority as presently enacted, but he added that there "might be an invasion of states' rights unless some reservation is made for state control over local expansion if state desires to exercise such power."

What Constitutes a Power Shortage?

THE small city of Tupelo, Mississippi, (population, 6,361) has been assiduously plugged during the past few years as the user of a great deal of electric power for its size. Yet it takes about as much electricity to make aluminum for a modern bomber as it does to supply Tupelo with current for an entire week. To make the steel for a 10,000-ton cruiser takes enough current to heat up all the electric irons in the United States.

These are the striking comparisons made in an article on the adequacy of power supply, which appears in the current (August) issue of *Fortune* magazine. The article states:

> Modern war demands more of everything than did the last war, but it has concentrated its pressures on light metals for planes and steel alloys for armor plate and guns, which can be made only with enormous quantities of electricity. Defense activities are using 30,000,000,000 to 40,000,000,000 kilowatt hours this year, 50,000,000,000 to 60,000,000,000 next year, and maybe 80,000,000,000 in 1943. Germany may have some 200,000,000,000 kilowatt hours at her disposal, of which the bulk is presumably used for military production. When the United States reaches a war effort that involves spending some $36,000,000,000 a year, that effort alone may demand around 100,000,000,000 kilowatt hours. Since the United States produced only 145,000,000,000 kilowatt hours last year, manifestly the power industry is in for a vast expansion or civilian use is in for a vast curtailment.

Checking over the general production and consumption situation in the United States with respect to electric power, the *Fortune* article points out that the aver-

age electric plant in the United States, during the past ten years, has used only some 2,850 production hours out of a maximum possible capacity of 8,760 hours per year. This is because of the unavoidable peaks and valleys in the routine function of generation and necessity for providing adequate reserves.

During 1941, this average utilization will probably rise to a little over 3,900 hours. According to the FPC, the best we can do in 1942, God granting plenty of water, is a little over 4,100 hours, or approximately 45 per cent of maximum capacity. Even this can be done only by extensive 3-shift operations of industry and by straining the reserve capacity.

In terms of actual production, therefore, the FPC estimates that this year American utilities, both public and private, will produce about 170,000,000,000 kilowatt hours; in 1942, some 195,000,000,000 kilowatt hours. But these are optimistic estimates; and in view of the drought, affecting the hydro plants which produce one-third of the nation's supply, it is possible that 1941 will witness the actual production of only 165,000,000,000 kilowatt hours and 1942 about 180,000,000,000 kilowatt hours. Because of the time lag (at least two years) between beginning of construction and operation of a power plant, it is doubtful if the addition of new capacity (beyond anticipated expansion already committed) would improve the picture to any extent.

How well do these figures meet the demand? The *Fortune* article presents both sides of the story:

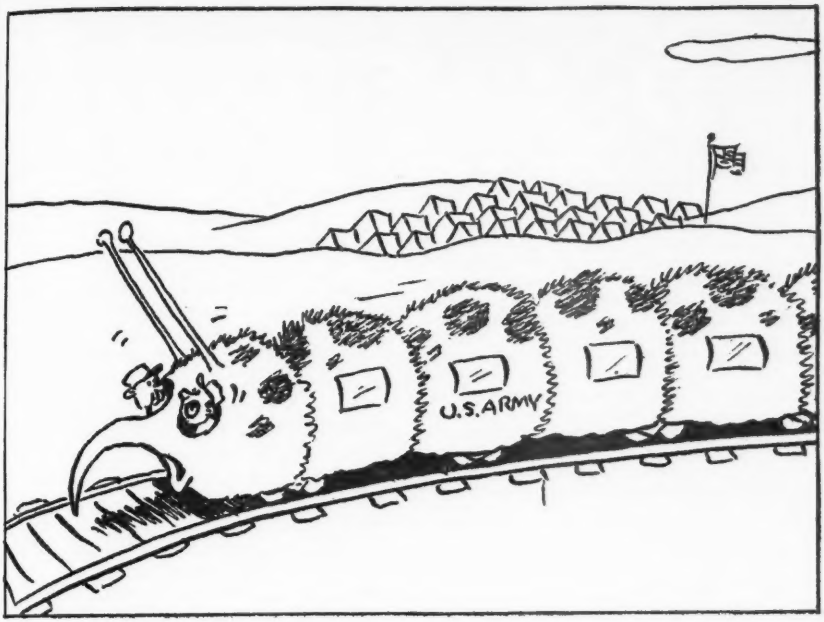
> The FPC regards the outlook as menacing if not exactly perilous, but its views are not shared by utility spokesmen at the Edison Electric Institute. This organization holds that power production could exceed government estimates considerably, points out that some utility properties with heavy defense loads are operating at over 6,000 kilowatt hours per kilowatt. Referring to practical flexibility not appearing in the statistics, it maintains that generators can be run at higher than rated capacity during the peak, that all reserves can be drawn upon, that more factories could and should be operated at night and over week-ends, when demand is low. This would involve changing the sleeping habits of some workers, and civilians might not have enough power for their colored electric-light bulbs and their vacuum cleaners in the short days before Christmas, the institute observes with irony, but it would allow production of as high as 5,800 kilowatt hours per kilowatt of capacity, or more than *265,000,000,000* kilowatt hours. (FPC experts claim there are practical barriers to this even under rigid totalitarian control.)

So much for over-all figures, which are necessarily misleading.

They are misleading because we do not use power on a national average basis. The mere fact that the situation is better than average in many areas would make it necessarily worse than average in some other sections. The recent power shortage in the Southeast, made acute by the spring drought, is a fair example of an aggravated local shortage which was not felt in most other sections of the country. There is the shortage in the Niagara Falls-Buffalo area, brought on by a sudden demand for power by more than a score of companies engaged in defense work.

Other tight situations are bound to show up in other areas before the year is out. The article continues:

> Studying defense contracts and OPM's plant-location program, the Federal Power Commission has made tentative predictions of areas that will be short of capacity to meet the 1941 and 1942 peaks. It figures that the upstate New York area should have 348,000 kilowatts more capacity to handle 1942 needs. The Philadelphia-New Jersey area needs 217,000 kilowatts more this year, and the Pittsburgh area needs 194,000 kilowatts in 1942. Other areas where it predicts deficiencies are in Ohio, northern Illinois, West Virginia, Baltimore-Washington, and of course the Southeast and Pacific Northwest, where large-scale aluminum production is scheduled. All together, the predicted area deficiencies aggregate 1,900,000 kilowatts in both 1941 and 1942. To be sure, those may never show up as actual shortages. Additional generating capacity will not be available in time, but many deficiencies may be forestalled by drawing upon reserves and by operating above rated capacity. Many may never come to pass because the OPM and entrepreneurs will locate plants where power is available. And others may be eliminated by new interarea connections.



Courtesy, Judge Magazine

"THEY'VE GOT THE TELEPHONE EXCHANGE CAMOUFLAGED SO WELL, THEY CAN'T FIND THE BLAMED PLACE!"

Of course, the abnormal and unforeseeable demand for huge quantities of power for the production of strategic metals has contributed a great deal to local shortages. Of the 40,000,000,000 kilowatt hours that will be needed for defense work in 1941 and the 60,000,000,000 kilowatt hours that will be needed in 1942, at least half will be used for the production of raw metals, such as steel, copper, aluminum, and magnesium. Aluminum is the biggest consumer, requiring 10 kilowatt hours to the pound, or 14,000,000,000 kilowatt hours for the 1,400,000,000-pound goal set for the United States aluminum industry.

On June 27th, OPM announced the location of eight new aluminum plants able to make 600,000,000 pounds a year (needed to achieve the total program) in Arkansas, Oregon, Washington, New York, Alabama, California, and North Carolina. These locations were picked because of the availability of power.

THE *Fortune* article noted that the proposed rate of expansion for 1941 and 1942 is limited by the impossibility of getting new equipment. What we will do in 1943 is still anybody's guess. The article states:

> It is hard to say what the over-all demand for 1943 will be, but on the basis of the previous estimates for 1941 and 1942, some 210,000,000,000 kilowatt hours would not be too much. Assuming production at the rate of 4,200 kilowatt hours for each kilowatt of capacity, production of 210,000,000,000 kilowatt hours would require over 52,000,000 kilowatts in capacity by the year end, or some 4,000,000 more than scheduled for 1942. The FPC has made detailed analyses of the power demands created by rising defense production, and estimates that over 5,000,000 kilowatts in capacity ought to be installed in 1943 (over 1942) to assure a safe margin.
>
> Actually, generating capacity for only

1,500,000 kilowatts is on order for 1943, and very little has been ordered for 1944 and 1945. Worse, the capacity to build generating equipment to the tune of 5,000,000 kilowatts per year is no more. Allis-Chalmers, Westinghouse, and General Electric, the only three producers of large units, are stocked up with Navy orders, and their suppliers are swamped with the demand for forgings. Normally they can deliver land steam generators to a maximum capacity of 3,000,000 kilowatts and hydrogenerators to 2,000,000 kilowatts, but this has been cut to the point where the power industry will be lucky to obtain 1,500,000 kilowatts in steam capacity and 1,000,000 in hydro capacity in 1943 besides the capacity now on order. Worst of all, if the government succeeds in spending in 1943 the annual $36,000,000,000 it aims to spend on defense, the need will be even greater. Such a rate of expenditure might require 100,000,000,000 kilowatt hours above the nation's normal needs, and even with substantial automatic displacement of peace-time power needs, we would require 59,000,000 kilowatts (assuming a use factor of 4,200 kilowatt hours per kilowatt), or about 10,000,000 above 1942, by the end of 1943. What is to be done?

It was stated that generator manufacturers may be able to turn out 2,500,000 kilowatts more for 1943 and that they have received very few orders for 1944 and 1945. This would be sufficient to handle the program at full swing in 1944. Other remedies suggested were the installation of interconnections, developing of new power, particularly Federal projects, and a curtailing of unnecessary usages of electricity of such a nature to contribute to peak load.

However, care must be taken in discussing possible economies in the use of power to be sure that proposed economies are really worth while. Reducing civilian consumption indiscriminately may not only fail to help the power shortage situation materially, but actually aggravate the industry's position by decreasing its revenues.

RECENTLY the consumers division of OPACS came out with a plea for nation-wide power saving—in the interest of defense. Things like advising housewives to turn off unnecesary radios and basement lights—perhaps at a time of day or in an area where such economy would be useless. This statement was written by an erstwhile official of the Consumers Union, a Leftist group, who is now employed by Miss Harriet Elliott, head of the OPACS Consumers Division. It was submitted to the FPC, which promptly turned thumbs down. "There are no bottles in which power can be stored," said the FPC, seeing no reason to cut utility revenues unnecessarily (not including rate cases, of course). But the OPACS statement was issued anyway.

Daylight saving proposals are another source of confusion. The FPC and the President—and the OPM, too—may be, to some extent, responsible for not making it clear that legislation is sought primarily as a precautionary measure. There is no present expectation that daylight saving will be imposed throughout the country. The bill now on hearing before a House committee is intended to authorize the President to decree daylight time in any area where an actual power shortage exists. Throughout most of the country there is presently no need to curtail the use of power. Shortages, if any, will come later in defense industry centers.

Restrictions (possibly in addition to daylight saving in some areas) are likely to be confined for the most part to electric signs, street lights, etc.

"A CURIOUS phenomenon is arising: Every bureau and department of the government whose existence or whose appropriations are threatened by the demand to go all out for defense, and to trim non-defense items, has evolved some type or scheme or system to prove their necessity or worthiness as defense projects."

—WESLEY E. DISNEY,
U. S. Representative from Oklahoma.

The March of Events

Seaway Lumped in Omnibus Bill

THE House Rivers and Harbors Committee voted on August 8th to include the controversial St. Lawrence seaway and Florida ship canal project in an omnibus Rivers and Harbors bill, which some members estimated might require appropriations totaling a billion dollars.

At an executive session the committee quickly approved, by 17 to 8, the $285,000,000 St. Lawrence development advocated by President Roosevelt as a national defense project, and then endorsed the $160,000,000 Florida ship canal, 14 to 10, after first providing that tolls should be charged for use of the waterway in order to make it self-liquidating.

Opponents of the two projects immediately forecast a bitter fight when the bill is brought before the House. "This will be the biggest pork barrel Rivers and Harbors bill in the history of Congress," said Representative Beiter of New York, an opponent of the seaway and the Florida ship canal.

Representative Bender of Ohio issued a statement describing the committee action with respect to the St. Lawrence proposal as "an entirely indefensible effort to push through a highly controversial measure by attaching it to a series of juicy pork barrel projects designed to capture votes."

Another opponent of the seaway, Representative Hall of New York, said that the committee action was "an abject confession of the utter inability to justify the St. Lawrence project on the ground either of national defense need or national economic benefits. It is obvious the committee felt the proposal could not stand on its own feet."

Representative Mansfield of Texas, chairman of the committee, said that President Roosevelt wanted the seaway placed in the omnibus bill. He said that he had received a letter from the President on the subject.

Utilities Get A-10 Priority

ALL utility industries, except telephone and telegraph, which were put on a deferred list soon to be acted upon, were granted the special priority rating of A-10 by the Office of Production Management for the delivery of maintenance and repair parts. The OPM order follows in a general way the earlier recommendation made by the Office of Price Administration and Civilian Supply. An emergency rating of "A-1-a" was also allowed the utilities in especially urgent cases, such as breakdowns due to fire or storm.

Specifically, the maintenance and repair rating was applied to nine industrial classifications: Commercial air lines, explosives, metallurgical plants, mines and smelting, Federal, state, and other publicly operated services, including publicly owned utilities, privately owned utilities (electric, gas, water, and sewage), railroads, coke converters, bus, and railways.

The A-10 rating is not automatically available. Application must be made on a special form, PD-67, which may be obtained by writing to the priorities division of OPM, 462 Indiana avenue, N. W., Washington D. C., or to one of the field offices.

Favors Power Work

SECRETARY of War Stimson forwarded to Congress recently a report by Major General Julian L. Schley, Chief of Army Engineers, recommending a 2-part $10,000,000 program for reconstruction of the power facilities of the Sault Ste. Marie power plant at St. Mary's Falls, Michigan.

The Secretary said, however, it would not be in accord with the President's program to submit during the present emergency any estimate of appropriations for the latter part of the plan in the absence of evidence that it possesses defense value.

The first step recommended by the Chief of Engineers would provide for installation of about 14,000 kilowatts in a new plant north of the locks of St. Mary's Falls and for appurtenant facilities for the development, transmission, and sale of power. Cost of that step was estimated at $3,500,000.

"The second step," General Schley said, "should provide for the enlargement of this new plant or the acquisition and reconstruction of the present power plant of the Michigan Northern Power Company to provide for an ultimate total installation of approximately 45,000 kilowatts."

Defense Curbs

THE U. S. House of Representatives was told recently that the electrical demands of defense production might necessitate curtailed use of air conditioning, street lighting,

and electrical signs. Testifying before the House Interstate Commerce Committee, Leland Olds, Federal Power Commission chairman, said that private industry in some cases might be called upon to reduce power consumption by a third.

Olds went before the committee to endorse legislation authorizing President Roosevelt to order daylight saving time for all or parts of the nation. "Daylight saving time," the witness said, "offers one form of emergency curtailment of power. We have to have the power of curtailment to fall back on to take up the slack. If we don't have that, then when an emergency comes along we will have no cushion to fall back upon."

The power official added that the defense program as a whole would require diversion from normal use of 55,000,000,000 kilowatt hours of the estimated 145,000,000,000 hours of energy now available.

William L. Batt, deputy production director of the OPM, said on August 6th that there was insufficient power available for the projected defense program and urged daylight saving time as one means of conserving electrical energy. Recommending the House Interstate Commerce Committee approve legislation to give President Roosevelt authority to establish daylight time when power shortages develop, Batt asserted there could be no doubt that "such a measure would make a material contribution to the national defense power supply."

Meanwhile, Governor Price of Virginia had issued a proclamation calling for the temporary adoption of "fast time" for a 49-day period from August 10th to September 28th, which was generally approved by town and county officials in the state. Governor O'Conor of Maryland announced he would take no steps to switch from Eastern Standard to daylight saving time unless the Federal government asked him to do so, and a spokesman for President Roosevelt indicated no such special request would be made. In Washington, D. C., the commissioners decided against adoption of daylight saving time.

Company Quits Utility Business

CITIES Service Company, $1,000,000,000 corporation with 800,000 stockholders from coast to coast, on July 31st announced a plan to quit the utility business and concentrate on petroleum and natural gas.

The plan, filed with the Securities and Exchange Commission, provided for formation of three regional utility companies which would issue stock. The stock in turn would be exchangeable for shares of preferred of Cities Service Company on a basis fixed by the company.

Stockholders were to vote on the proposal at a special meeting and if they authorized it, the plan would become effective if, prior to January 1, 1942, 80 per cent of the preferred stock shall have been delivered to the company for exchange under the plan.

The three regional groups are to be called the Rocky Mountain Regional Corporation, Ohio Regional Corporation, and Mid-Continent Regional Corporation. Utilities to be absorbed by each regional corporation shall be so assembled that the units will conform to Securities Commission requirements and will be able to function successfully without depending upon their former parent or any other holding company affiliation, according to the plan.

New Projects to Meet New Needs

A TENTATIVE list of potential power developments west of the Mississippi river, prepared by the Bureau of Reclamation, was submitted late in July to a Senate subcommittee by H. W. Bashore, acting Reclamation commissioner.

Bashore testified that "with the West facing critical deficiencies in electric energy, the Bureau of Reclamation is ready to begin construction of projects which will avert what otherwise may be catastrophic consequences." He said that although power for national defense provided the "immediate urge" for most of the plants, they would all "serve one or more other beneficial purposes" such as irrigation or rural electrification.

He emphasized that reference to approximate years of completion "presupposes immediate authorization, adequate funds, and high priorities in equipment and machinery to achieve the necessary periods for investigation and construction."

Arizona

Orders Hearing on Project

THE Federal Power Commission on July 30th ordered that a public hearing be held on the application of the state of Arizona for a preliminary permit for the proposed water-power development of the Bridge Canyon project on the Colorado river. The hearing will be held in Washington, D. C., September 22nd.

A public hearing is desirable, the commission said, to ascertain: (1) The facts and the law surrounding the commission's jurisdiction to issue a preliminary permit or license for a power development in the area proposed by the applicant under the Federal Power Act; (2) whether the applicant is now ready to make the examinations and surveys, prepare the maps, plans, specifications, and estimates,

make financial arrangements, and otherwise perform the acts required of a permittee under the statute.

Application for the permit was received from the state (now represented by the Colorado River Commission of Arizona) August 3, 1938. A request for postponement of action on the application made in September, 1938, by a special committee representing the four upper basin states of the Colorado river (Utah, New Mexico, Wyoming, and Colorado) was granted by the commission. Later representatives of the seven Colorado river basin states, including Arizona, were granted additional delay until they could give the application further consideration.

Rejects Municipal Ownership

WILLCOX, first city in the state to vote on municipal purchase of private utilities under terms of a new law, recently decided against the proposal. In a late July election, the vote was 43 for and 103 against the question of buying the power plant and water system from the Southern Arizona Public Service Company for $87,500.

By vote of 41 to 101, the electorate also rejected an accompanying proposal to issue $100,000 in bonds to finance the purchase, the bonds to be retired from revenues accruing from operation of the utilities.

If the city had voted to acquire the power and water systems, power would have been purchased from a near-by REA project, the Sulphur Springs Valley Coöperative.

Some of those who voted against the proposal said they feared revenues might not be large enough to take care of bond retirement, which would necessitate higher property taxes. Others thought the purchase price was too high.

Arkansas

REA Unit Plans Service

ANNOUNCING that the newly organized Ark-La Electric Coöperative, Inc., would qualify to do business in Arkansas with Secretary of State C. G. Hull, Thomas Fitzhugh, lawyer for the coöperative, recently outlined the objectives of the organization.

With a view towards "developing every resource in this section which can be developed feasibly with cheap power," Mr. Fitzhugh said initial plans called for the construction of a 15,000-kilowatt steam power generating plant in north Louisiana to supply power to Rural Electrification Administration coöperatives, to defense industries in south Arkansas, and to handle industrial loads which will continue after the emergency.

Ark-La has received an initial allotment from the REA of $520,000 to start construction of the power plant which, when completed, will be the first large-scale generating plant built by REA coöperatives. Location of the plant and the question of whether it will be fueled with "sour" gas or coal, would depend on engineering surveys being made by a New York firm, Mr. Fitzhugh said.

Except on a small scale in Minnesota, Michigan, and Wisconsin, REA coöperatives do not generate their own power but merely transmit electricity to rural areas. Members of Ark-La have been supplied by the Arkansas Power & Light Company.

Ark-La was said to be making a bid to supply power to the 100,000,000-pound aluminum plant to be placed in Arkansas by the Office of Production Management. A decision by OPM as to the power supplying agency was holding up the announcement of the location, Mr. Fitzhugh said. Ark-La can supply the aluminum plant at rates comparable to the Tennessee Valley Authority's, he said.

Property Appraisal Filed

AN appraisal report listing the value of the Twin City Pipe Line Company's properties at $696,752 net was filed with the state utilities commission by the Fort Smith concern early this month, in connection with the company's application for authority to increase rates to industrial consumers of the Fort Smith area.

The company sought to increase the industrial rates from 10 cents to 15 cents per one thousand cubic feet for the first 3,000,000 feet per month, and to 13 cents per one thousand for the next 3,000,000. Pending the outcome of a hearing, the company was permitted to post a $20,000 bond and make the new rates effective.

The hearing will be held September 3rd.

California

Rescinds License for Projects

THE Federal Power Commission on July 30th rescinded its orders of February 1, 1941, June 2, 1941, and June 21, 1941, authorizing issuance of a license with special conditions for the proposed Cresta and Pulga power plants on the north fork of the Feather river

to the Pacific Gas and Electric Company. The commission also dismissed the company's application for the license. The action was taken because the company refused to accept the special conditions the commission ordered included in the license.

Hetchy Power Plan

SECRETARY of Interior Ickes this month formally approved a plan (subject to voters' approval) for San Francisco's entry into public ownership. The plan proposes the issuance of $66,500,000 of revenue bonds to cover the purchase of Pacific Gas and Electric Company facilities and provide for new construction. Adoption of the plan will be submitted to the electorate next November.

Since the citizens of San Francisco have repeatedly refused to be coerced into municipal operation of power distribution, the outcome of the election will be awaited with much interest.

If the proposition is again rejected, the disposition of Hetch Hetchy power in compliance with the Raker Act will present a knotty problem. It is expected a serious effort then will be made to induce Congress to amend the act to permit the city to distribute the power through an agency agreement with the Pacific Gas and Electric Company, as has been done for many years.

Colorado

Rate Cut Suggested

OPERATING revenues of the Colorado Interstate Gas Company, selling natural gas to the Public Service Company of Colorado for distribution in Denver and other Colorado cities, should be cut almost in half to bring its earnings down to a "fair and reasonable" return on its investment, according to counsel for the FPC in a brief filed with the Power Commission in Washington in the Denver gas rate case.

The Colorado Interstate Company and the Canadian River Gas Campany, from which the Colorado Interstate buys gas, together have earned an average of 15 per cent on their combined investment since they started operations in 1928, and in recent years have earned approximately 20 per cent, the brief claimed.

Earnings of both companies should be reduced by the Power Commission to a "fair" rate of 6½ per cent, according to the arguments of the commission's counsel.

At the same time the brief claimed the Colorado-Wyoming Gas Company, which buys gas from Colorado Interstate and sells it to northern Colorado towns for resale in Cheyenne, had been earning more than 12 per cent on its investment and likewise should be reduced to a 6½ per cent rate of earning.

Connecticut

PUC Orders Line Extension

EXTENSION of electric power service to all but the most isolated homes and farms in Connecticut was apparent recently as Governor Hurley disclosed that the state public utilities commission had already ordered nine of the state's 12 utility companies distributing electric current to extend their lines into most of the rural territory now unserved.

Under these orders, and similar ones to the other three companies being drawn up by the commission, some 1,075 miles of new line will be strung, bringing electricity to 4,536 potential customers, representing with their families more than 14,000 persons. This will mean virtually 100 per cent electrification of Connecticut.

Announcement of the extension orders, carrying out the terms of the 1941 legislature's Rural Electrification Act, was made by the governor after he had received from the commission a requested preliminary report on the progress of the new program.

All of the state's electric companies, Governor Hurley was told, have indicated their willingness to coöperate in the program, and in most cases the rates specified in the commission orders were those proposed by the companies themselves, based generally on their own present rates and thus varying somewhat from one part of the state to another.

Illinois

FPC Authority Questioned

RALPH H. James, president of the Chicago District Electric Generating Corporation, commenting on the recent ruling of the Federal Power Commission which set 5½ per cent as a fair rate of return on that property, questioned whether the commission is empowered

to take such action. He said the company was subject to complete regulation by the Indiana Public Service Commission and that its power contracts with Illinois firms also had been approved by the Illinois Commerce Commission.

The Federal Power Act provides that regulation is "to extend only to those matters which are not subject to regulation by the states," Mr. James contended. On this basis the company contested the question of jurisdiction.

Inasmuch as the company is a subsidiary of Commonwealth Edison Company and the same firm is the principal purchaser of its output, the ordered rate reduction was not expected to have any effect earningswise on the parent concern.

Bus Fare Slash Asked

At a hearing recently ordered by the Illinois Commerce Commission, Attorney General Barrett urged an immediate reduction from 10 cents to 7 cents as the bus fare of the Chicago Motor Coach Company, while Alderman Paul H. Douglas (5th) suggested that a slash in rates to three rides for 25 cents should be ordered. Both officials have repeatedly charged that the motor coach company is earning excessive profits.

City attorneys, who were ordered by the commission to start their long-delayed case, asked for a few days more to amend their old petition filed against the Coach Company April 11, 1934. William H. Sexton, city traction counsel, said the city "is willing to go ahead with what evidence we have been able to gather" but added that the city would prefer to wait until the bus company filed an answer to the petition.

Assistant Commissioner William E. Helander announced that the full commission would hold an emergency session in Springfield August 13th to hear all motions on the bus fares.

Kentucky

Adopt 6-day Week

Construction forces on the TVA Kentucky dam at Gilbertsville have gone on a 6-day week as part of the speed-up program to complete the dam by 1944, a year ahead of schedule, it was recently reported. The 3,200 employees at the dam and in the reservoir basin had been working 5-day weeks.

Work is concentrated largely in the building of the power house and parts of the concrete section of the dam. From bedrock approximately 70 feet below the present river level, shafts of concrete are rising which will attain a height of 160 feet. The huge steel gates for controlling lock operations are being assembled in the navigation lock area, it was said.

Louisiana

Utility Strike Settled

The Defense Mediation Board announced on July 29th that an agreement had been reached for settlement of the strike at the Gulf States Utilities Company at Baton Rouge, and that the men on strike would return to work the next day.

Board officials said that the agreement was approved by representatives of the company and by the International Brotherhood of Electrical Workers (AFL). About 200 men were involved in the strike, which started July 9th, officials said. Recognition of the union and negotiation of a collective bargaining agreement were the issues, it was reported.

Minnesota

Car Token Increase Asked

An increase from 45 cents to 50 cents in the price of six street car tokens was asked by the Twin City Rapid Transit Company of St. Paul on August 8th in a petition filed with the Minnesota Railroad and Warehouse Commission. The company, in asking for the token fare increase stated its willingness to have the cash fare remain at 10 cents, with the same transfer privileges as at present.

Asserting the belief that the rates, even if the commission grants the authority for the increase, "will not yield a fair and reasonable rate of return on the valuation," the company contended that the increase represented the "minimum rate of fare essentially necessary to meet the transportation requirements of your petitioner."

The company's valuation on January 1, 1925, was stated in the petition to have been $16,196,090.

Natural Gas Permit Asked

THE question of determining a final policy on natural gas service for St. Paul was thrust before the St. Paul city council on August 6th with an application for an immediate permit for the Minnesota Gas Corporation, to build facilities for supplying the new small arms ammunition plant as well as industries in the city.

Minneapolis and many other Minnesota communities now have natural gas service. Two St. Paul industries, the Ford plant and the Waldorf Paper Products Co., have natural gas service, but all other consumers receive manufactured gas from the Northern States Power Company, under exclusive service permits granted by the council.

The Minnesota Gas Corporation, which presented the new application, already had another application pending before the council, which had not been acted upon, for submission to the voters of a 20-year franchise ordinance. Such a franchise, if voted, would permit service to all types of consumers in the city, industrial, commercial, and domestic.

The council also had before it an application of the Peoples Natural Gas Company, which supplies the Ford and Waldorf plants, to extend its lines through the city to the new ammunition plant without payment of any gross earnings tax to the city for that permission.

Missouri

To Fight Indictment

UNION Electric Company of Missouri will plead not guilty in answer to the eight counts of a Federal indictment charging it with violation of and conspiracy to violate the corrupt practices section of the Holding Company Act. Notice to this effect was filed on August 8th by the company's counsel, former Circuit Judge J. Wesley McAfee.

Louis H. Egan, former president of Union Electric, is a codefendant in the indictment. His motion for a separate trial recently was denied by United States District Judge George H. Moore. Egan and the company are charged with having arranged for and made political contributions. The indictment resulted from the extensive investigation by the Securities and Exchange Commission which disclosed use of a huge slush fund by a former management of the company.

A date had not been set for the trial but it was expected the case would be docketed for this fall.

New York

Tax Burden Lowers Dividend

THE cost of rearming America was driven home recently to stockholders of the Consolidated Edison Company. Directors of the world's largest electric and gas utility company cut the dividend for the third quarter to 40 cents a share from 50 cents because of the heavier tax burden. The company's revenues during the first six months increased $728,000 but taxes rose $2,590,000.

Floyd L. Carlisle, chairman of the board, explained the dividend reduction as follows:

"Revenues from the sales of our services showed an increase for the first six months of this year of $728,000, but our taxes increased by $2,590,000. We are accruing Federal income taxes for 1941 at a 30 per cent rate. This, together with increases in certain other taxes, will raise our tax load for the year to $62,000,000, up $4,000,000 over 1940.

"A total of $62,000,000 in taxes means $5.40 a share on the common stock outstanding; it means over $1,700 per employee and is 24 cents out of each dollar of operating revenue. The trustees believe that sound business practice, especially in the present uncertain times, requires the maintenance of a substantial margin of earnings over dividends on the common stock."

Gets New Electric Customers

DURING the past several months the owners of seven private electric generating plants in New York city have arranged to shut down their plants and substitute instead the service of Consolidated Edison Company. Included in the group are the Vanderbilt hotel, involving a 500-kilowatt steam-driven plant, and the Methodist Book Concern, 150 Fifth avenue (475-kilowatt plant). In addition, there were six partial shutdowns of isolated electric generating equipment in favor of Edison service.

Expansion in demand by several large gas and electric consumers was also noted.

Named to Power Authority

GOVERNOR Lehman on August 8th appointed Gerald V. Cruise of New York city to the State Power Authority.

Mr. Cruise has been executive secretary of the authority since 1929 and is a member of the United States-St. Lawrence Advisory Committee.

Ohio

Ban on Diluted Gas Ordered

WITH Dennis F. Dunlavy dissenting, the state utilities commission on July 31st ordered all subsidiaries of the Columbia Gas & Electric Corporation operating within Ohio (including Ohio Fuel Gas Company) to cease and desist the further distribution of such diluted gases unless authorized by contract.

Action of the commission followed a 3-hour conference growing out of the recent decision of the state supreme court, remanding to the commission the rate controversy hinging upon the 1934-39 Columbus rate ordinance. The court at that time ordered the commission to delete from the cost of producing natural gas the cost of producing inert gases which, the company contended, had been done to secure a stabilization of the product distributed and sold at retail.

Mr. Dunlavy charged the commission order had been prepared in secret and would "endanger the lives of thousands" because stove burners could not be adjusted for the new gas before the effective date of the order, August 14th.

Subsequently, the Ohio Fuel Gas Company, contending that the commission was without jurisdiction, filed with the commission an appeal for a rehearing and rescinding of its order.

The company asserted in its application that in the interests of the public it would request an early decision by the commission on its protest with the intention of carrying the case to the state supreme court upon appeal.

Oregon

Gas Company Asks Permit

THE Portland Gas & Coke Company early this month asked the city council of Gresham for a new 20-year franchise, the old franchise having expired August 4th. The new contract would be identical save for a clause permitting cancellation by the city upon the firm's failure to meet its provisions. The council tabled the request for future action.

Pennsylvania

Rate Hearing Adjourned

THE Federal Power Commission adjourned until further notice, on August 4th, its hearing on the reasonableness of rates charged by Peoples Natural Gas Company of Pittsburgh, after the company had declined to produce its books under subpoena.

Edward M. Borger, president, and S. J. Radcliff, treasurer of the company, declined to produce the books, said to number "several thousand ledgers," on the ground that the commission lacked jurisdiction. Mr. Borger contended it had not been established that the company was a natural gas company under the Natural Gas Act.

The commission denied the company's motion to dismiss the proceedings. Examiner Samuel H. Crosby, presiding, said the investigation would be " carried on by the Federal Power Commission in its own manner, which will be announced later, and until then, the hearing is adjourned." Company officials said they were ready to make a "test case."

Rhode Island

Will Build to Meet Defense Demands

THE Narragansett Electric Company will construct a $2,500,000 power plant in Westerly, Samuel C. Moore, president, reported recently.

The company's decision to install the plant at this time, according to Mr. Moore, was brought about by the growth of demand for power from defense industries, including the Quonset Naval Air Station.

The company, he said, already had placed an order for two 10,000-kilowatt, steam-driven turbogenerators for the new plant and, based on manufacturers' deliveries, the plant is scheduled for completion by December, 1942.

"In view of the limitations of the company's present transmission lines to carry additional load," said Mr. Moore, "such a plant has been under consideration for some time, and considering the growing importance of the whole southern section of the state, it appears highly desirable that the area be provided with a local source of power."

The Latest Utility Rulings

Procedure on Simplification of Holding Company System

THE Securities and Exchange Commission, in findings and an opinion relating to simplification of Engineers Public Service Company and its subsidiary companies, excluded evidence bearing solely upon the constitutionality of the Holding Company Act. The commission deemed itself without power to declare the statute or part thereof unconstitutional and considered that a reviewing court, in the event an appeal should be taken, could order such evidence to be adduced later if it saw fit to do so.

Section 11 (b) (1), clause (B), of the Holding Company Act, permitting continued control of additional integrated public utility systems by a holding company, was held to restrict such additional systems to those operating in a state in which the principal system operates, or in states adjoining such a state, or in a foreign country contiguous thereto.

The commission held that, in the proceeding under § 11 (b) (1), where the holding company had not selected the principal integrated public utility system to which the operations of its holding company system would be limited and claim was made that the holding company had the right to make such selection, whether or not such right of selection belonged to the holding company or to the commission, the holding company would be permitted under the circumstances to select one of its two most profitable integrated systems. Either one was satisfactory in the opinion of the commission, and the choice was a close one. It was said further that, although the commission was under no duty to do so, it would try certain ancillary issues and make advisory findings thereon to aid the holding company to make such selection. Where certain utility and nonutility properties were not retainable in relation to either of the two possible principal utility systems, and divestment thereof would be necessary whichever of such systems was selected as the principal one, the holding company was ordered to divest itself of such nonretainable properties, as necessary for ultimate compliance with § 11 (b) (1).

Where the holding company claimed the right to have the commission make findings as to the status of properties to be divested, it was held, in respect of nonretainable properties belonging to subsidiaries which were not registered holding companies, that findings would be advisory only. Inasmuch as they would be largely academic and would not be materially helpful if made in the § 11 (b) (1) proceeding, they would not be made. In respect of nonretainable properties belonging to a subsidiary which was a registered holding company, such findings were required to be made in a § 11 (b) (1) proceeding, but whether they were made before or after the top holding company was ordered to divest itself of the subholding company was a matter within the discretion of the commission.

The top holding company was required to divest itself of all of its interests in subsidiary companies operating utility systems and other businesses which the holding company system could not continue to operate under § 11 (b) (1). It was ruled that a mere reduction of its holding of voting securities of such companies would not be sufficient to constitute compliance with the law. *Re Engineers Public Service Co. et al. (File No. 59-4, Release No. 2897).*

Emergency Service Regulation Permitted Because of Power Shortage

A PETITION by the Alabama Power Company for approval of a temporary emergency service regulation, in the form of a rider to be attached to new contracts for electric power service, was granted by the Alabama Public Service Commission, but the commission reserved full jurisdiction of the subject matter and of all contracts to which the rider might be attached.

This rider was to be attached to new contracts for industrial and large general and rural power service and for commercial service.

The rider provides in substance that in view of the large increase in demands for power made upon the company's system for national defense purposes and the conditions brought about by drought, the contract is approved by the company with the specific reservation (1) that until this rider is revoked the company will supply power only when, as, and if it has the same available in excess of power heretofore sold, and (2) that the company shall be the sole judge of the availability of such excess power. It is understood and agreed that as more power becomes available the rider and similar riders will be revoked in the order in which contracts to which they are attached were approved by the company. *Re Alabama Power Co. (Non-Docket 1338).*

Federal Court Refuses to Interfere with Order Relating to Refinancing

THE California commission approved and authorized a refinancing plan of the Market Street Railway Company extending the maturity, reducing the interest, and changing sinking-fund provisions of the railway company bonds. A bondholder who had not participated in the proceedings before the commission sought a declaratory judgment from the United States District Court as to the rights and duties of bondholders, the street railway company, and the trustee for bondholders. A motion to dismiss was granted.

The court said it was not necessary to point out that when the commission assumed jurisdiction over the railway company for the purpose of administering the law applicable to its activities such jurisdiction was exclusive except as restricted by the Public Utilities Act. The court had no power to review or interfere with orders of the commission in a matter where its jurisdiction was unassailable.

The court followed the rule that declaratory relief rests in the court's discretion and that this is a judicial discretion which must find its basis in good reason. It was said that no useful purpose would be served by a trial of the controversy; that a trial would not settle the entire controversy; and that for the court to accept jurisdiction in a controversy involving a matter passed upon by the commission, of which it had exclusive jurisdiction, would be improper. *Delno v. Market Street Railway Co. et al. 38 F Supp 341.*

Commission Has Power and Duty to Regulate Inductive Interference by Power Line

THE supreme court of Kansas has upheld a district court judgment holding unlawful an order of the Kansas commission approving plans of a rural

electric coöperative association for the location of a power line. The proposed line would run along highways upon which are located lines of a telephone company, and power line construction would cause inductive interference with the service of the telephone company. The commission had held that it could not withhold approval of the plan because of protests by the telephone company.

The lower court had ruled that the order was unlawful and remanded the case to the commission with the direction to promulgate reasonable rules and regulations covering inductive coördination and thereafter to reconsider the application in the light of such regulations.

A Kansas statute gives the commission power to prescribe reasonable rules and regulations with respect "to the stringing and maintaining of wires in all cases where there is danger or possibility of unreasonable interference with or damage to the wires or service of one utility by those of another utility." This language was held broad enough to cover inductive interference caused by the maintenance of an electrical transmission line paralleling the telephone lines along public highways.

The supreme court held that it was not only within the power, but it was also the duty of the commission to prescribe reasonable rules and regulations. Quoting from the decision of the supreme court:

> While the findings of the commission recite that the proposed lines of the rural electric will be constructed in accordance with the rules of the commission as published in Docket No. 1944, it does not state the rules as promulgated cover the matter of unreasonable interference with the "service" of one utility by another utility that may result from the stringing of wires upon, along, or across the highways of the state. We agree with the conclusion of the district court that interference of the "service" as used in the statute is broad enough to include inductive interference. Because the rules were not formulated on that question as provided by the statute, the district court held the order of the commission was unlawful. In that ruling we concur.

Central Kansas Telephone Co. Inc. v. Kansas Corporation Commission, 113 P(2d) 159.

Accounting Requirements on Merger of Subsidiaries with Parent

THE Securities and Exchange Commission permitted a parent holding company, which was also an operating electric utility company, to acquire electric utility properties of wholly owned subsidiaries through merger. The properties were interconnected with, and were serving, areas contiguous to those served by the utility facilities of the parent.

In connection with the merger it was required that an amount representing intrasystem profits in the acquisition of the securities presently carried in the investment account of the parent corporation should not be carried forward with the merger but should be, concurrently therewith, written off against the capital surplus account of the parent company. Jurisdiction was reserved by the commission as to the accounting treatment to be accorded all intangibles upon the books of the subsidiaries, and as the same might be carried over to the books and records of the parent corporation as the surviving corporation upon the consummation of the proposed merger. Jurisdiction was also reserved as to the treatment to be accorded an item representing the net excess costs of the securities to be surrendered for cancellation by the parent corporation, in connection with the proposed merger, over the par value thereof.

The parent corporation was required to provide on its books a subaccount to which should be charged the portion of the excess cost of securities of the subsidiaries which it was currently permitted to account for in Account 100.5 of the FPC uniform accounts. Balance sheets issued by the parent corporation subsequent to consummation of the merger

were to carry a footnote which would clearly indicate the "reserve for possible adjustment of intangibles" as set forth is a reserve for the possible adjustment of intangibles recorded in Account 100.5 as a result of the merger. *Re Northern States Power Co. et al. (File No. 70-53, Release No. 2903).*

Service Improperly Denied to Coerce Customer

THE Pennsylvania commission imposed a penalty upon a water utility for discontinuing service to a customer who did not comply with a demand by the utility owner that he make improvements to a driveway. The utility owner had notified the customer that service would be discontinued unless, within ten days, improvements were made in a driveway adjoining the driveway of a residential property owned by the former. The letter stated that the driveway was unsightly and that the writer did not intend "to serve water to anyone who has no pride in their property."

Admittedly denial of service was unwarranted and unlawful, but the utility owner sought to escape the imposition of fines and penalties on the ground that the company was in such precarious financial condition that to penalize it would be to force it to go out of business. The commission strongly disapproved the illegal conduct but gave consideration to the plea of poverty and refrained from meting out "the punishment which it justly deserves." Warning was given that a repetition of this conduct would be penalized to the fullest extent possible under the law. *Montgomery Trust Co. et al. v. Belmont Water Co. (Complaint Docket No. 13406).*

Power to Regulate Taxicabs Upheld

IN an action to restrain enforcement of an order of the Maryland commission regulating taxicabs in the city of Baltimore, Circuit Court No. 2 of Baltimore City sustained a demurrer to the bill of complaint, with leave to amend. The court upheld the power of the commission to make reasonable rules and regulations to govern the control and operation of taxicabs in the absence of a showing of arbitrariness or unreasonableness.

The commission, it was held, may prohibit cruising by taxicabs in and near Baltimore city. Owners and operators of cabs, it was said, do not acquire vested rights to cruise or to operate them in accordance with earlier rulings and opinions of the commission. Taxicabs are operated under annual permits expiring with the calendar year. It was said that the commission had power to recognize changes in conditions and to obtain the benefits of improved methods and devices.

The statute making unlawful the so-called "nut" or "minimum booking system" of compensating taxicab operators was held to be a constitutional exercise of legislative power. A regulation of the commission in substantial accord with the terms of the statute was held to be reasonable and valid. Requirements that operators be paid by wages or a percentage of gross receipts, that the owner pay all operating expenses and charge to the service gasoline at cost, and that no driver work continuously for more than twelve hours, were held to be reasonable and valid.

A rule requiring taxicabs to be operated as units of an effective operating group unless expressly exempted by the commission was declared reasonable and valid, although it might conceivably work

injuries in particular cases. Until such cases arise, said the court, and the commission has acted upon them, the court would not anticipate unjust or unreasonable action by the commission. The complainant in this case operated 212 taxicabs under that number of permits. The court said that the company would most likely of itself constitute an effective operating group within the meaning of the rule. *Sun Cab Co. Inc. v. Maryland Public Service Commission.*

Warning Issued on Unauthorized Bus Operations in New York

THE New York commission has warned bus operators that, although the commission in the past may have condoned certain illegal practices by granting a certificate to operate, what was incidental and perhaps accidental has developed into a practice, and the commission has decided that hereafter no authority will be granted to an operator guilty of illegal operation at the time.

It was said that all illegal operation must cease and that every applicant must come before the commission with clean hands and secure full legal authority to operate before proceeding.

This statement applies to all classes of illegal operation, such as operation over a new route or highway without authority, deviations from authorized routes, and abandonment of part or all of a route. It was said that the only exceptions to these rules are temporary or extreme emergencies, such as fires, floods, and street reconstructions requiring an immediate and brief departure from authorized routes or suspension of service. Even then, it was said, if the operation is to continue for any considerable length of time, authority should be obtained. *Re Unauthorized Bus Operations.*

Other Important Rulings

THE New York commission would not authorize substitution of busses for street cars where a company admitted that it would not have sufficient busses to operate the line for a year or more and where the only expectation of being able to have sufficient busses in subsequent years was the possibility that riding might be so reduced as to release busses from existing lines. *Re International Railway Co. (Case No. 10418).*

The California commission denied an application for a certificate where the only testimony as to public convenience and necessity was vague, indefinite, and unconvincing and amounted to but little more than an assertion of the applicant's desire for a certificate. It was said that certificates cannot be granted without adequate and affirmative proof that the proposed service is needed. *Re Callahan (Decision No. 34151, Application No. 22830).*

The New York commission held that variations in rates due to the varying liability which a carrier assumes in transporting property are generally in the public interest, but that the burden of proof is on an applicant to show that suggested rates are fair and reasonable and principally that the variations submitted represent variations in the actual cost of service. A mere showing that limited liability rates are in use elsewhere is insufficient. *Re Limited Liability Rates (Case 10479).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 39 PUR(NS) NUMBER 3

Points of Special Interest

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Re Curtailment of Use of Electric Energy

[Docket No. IT-5703.]

Electricity, § 1 — Emergency under Federal Power Act — National defense requirement.

A sudden increase in the demand for electric energy to meet the requirements of national defense production, coupled with a shortage of electric energy due to drought and insufficient steam generating and transmission facilities, constitutes an emergency within the meaning of § 202(c) of the Federal Power Act, 16 USCA § 824a(c).

[June 27, 1941.]

RECOMMENDATION *for curtailment of use of electric energy in the southeastern states because of the existence of a national emergency under the Federal Power Act.*

By the COMMISSION: The President of the United States in his proclamation of an unlimited national emergency calls upon "all loyal citizens to place the nation's needs first in mind and in action to the end that we may mobilize and have ready for instant defensive use all of the physical powers, all of the moral strength and all of the material resources of this nation."

The production of strategic defense materials and particularly the production of aluminum which is vital to the aircraft program, will be seriously impeded by a shortage of electric energy in the southeastern part of the United States unless steps are taken immediately (a) to secure a curtailment of the use of electricity by all consumers except for direct or indirect utilization in defense production and (b) to provide additional transmission interconnections to assure the widest availability of electricity which can be generated.

The Federal Power Commission has completed a comprehensive survey of the many factors involved in meeting the emergency power situation now prevailing in the southeastern area of the United States.

This critical power situation is due to the necessity of keeping defense industries producing without interruption in spite of a growth in defense load greatly exceeding expectations and a drought which practically eliminated the seasonal power on which the aluminum and certain national defense industries were relying for a large part of their power requirements.

The citizens and industries of Alabama and Georgia have recently joined with the electric utilities serving those states in a voluntary patriot-

ic effort to curtail the use of electric energy in order to assure continuity of power supply for all-out defense production. The sharing of this patriotic duty of curtailment of the use of electric energy by all consumers in the southeastern states is vitally needed for continued expansion of the production of defense materials.

On the basis of the conclusions drawn from its recent comprehensive survey, the Commission hereby finds and determines that: An emergency, within the meaning of § 202(c) of the Federal Power Act, 16 USCA § 824a (c), exists in the southeastern area of the United States, resulting from a sudden increase in the demand for electric energy to meet the requirements of national defense production, coupled with a shortage of electric energy due to drought and insufficient steam generating and transmission facilities, and the Commission urgently recommends to all publicly and privately owned utilities and to all citizens of the states of Virginia, North Carolina, South Carolina, Georgia, Alabama, Tennessee, Mississippi, and Florida, that:

(1) The use of electricity for all nonessential and nondefense purposes be curtailed, including the use by and sale to domestic and commercial consumers, industrial consumers to the extent that they are not engaged in production for the defense program, and the use of electric energy by municipalities for street and ornamental lighting to the extent consistent with the public safety and the public interest.

(2) The publicly and privately owned utilities in the designated states advise with the Commission as to the specific steps to be taken to expedite the carrying out of this recommendation.

MICHIGAN PUBLIC SERVICE COMMISSION

Re Consumers Power Company

[D-2948.]

Rates, § 302 — Tax clauses — Municipal levies.

1. A gas company having in each of its rate schedules a tax clause providing that the standard rates will be increased within the limits of municipalities levying special taxes, license fees, or street rentals so as to offset such charges and prevent customers in other localities from being compelled to share any portion of such local increases, should be permitted to include this provision in the standard rules and regulations of the company applying to the sale of gas, p. 131.

Rates, § 302 — Tax clauses — Levies based on commodity sale.

2. A gas company should be permitted to include in its standard rules and regulations a provision that bills shall be increased to offset any new or increased specific tax or excise imposed by any governmental authority upon

the company's production, transmission, or sale of gas, the amount of which tax or excise is measured by the unit or units of such commodity, p. 131.

[March 20, 1941.]

APPLICATION *by public utility company for authority to include tax clauses in rules and regulations covering sale of gas; granted.*

By the COMMISSION: The Consumers Power Company filed with this Commission an amended petition on March 19, 1941, requesting approval of the Commission for the inclusion of tax clauses as Rule 19 in its standard rules and regulations governing the sale of gas.

[1] It is represented by the petitioner that it now has on each of its rate schedules a tax clause which provided that "the standard rates of the company will be increased within the limits of the municipalities who levy special taxes, license fees, or street rentals so as to offset such charges and prevent customers in other localities from being compelled to share any portion of such local increases." Since the foregoing provision applies to all the schedules, it appears advisable to include the provision in the standard rules and regulations of the company applying to the sale of gas.

[2] The petitioner also desires to include in its standard rules and regulations pertaining to the sale of gas a tax clause to offset any new or increased tax imposed by any governmental authority on the company's production, transmission, or sale of gas which will enable the company, should such a contingency arise to meet the situation without the necessity of, at that time, making adjustments in its rates to offset such new or increased tax.

After careful consideration of this matter the Commission is of the opinion that the incorporation of the tax clause in the standard rules and regulations of the company governing the sale of gas is desirable and is in the public interest.

Now, therefore, it is hereby *ordered* by the Michigan Public Service Commission that the following rules and regulations shall be and the same are hereby approved effective April 1, 1941:

Special Taxes

(a) In municipalities which levy special taxes, license fees, or street rentals against the company, and which levy has been successfully maintained, the standard of rates shall be increased within the limits of such municipalities so as to offset such special charges and thereby prevent the customers in other localities from being compelled to share any portion of such local increase.

(b) Bills shall be increased to offset any new or increased specific tax or excise imposed by any governmental authority upon the company's production, transmission, or sale of gas, the amount of which tax or excise is measured by the unit or units of such commodity.

It is *further ordered* that the Consumers Power Company shall prompt-

ly amend its rate schedule now on file with this Commission in conformity with this order and Commission's order D–3096 governing the filing of such schedules.

It is *further ordered* that the approval herein given is without prejudice to the power of the Commission at any time on its own motion or on the petition of any interested party to inquire into and investigate the reasonableness of any rule, regulation, or practice hereby approved.

The Commission retains jurisdiction of the matters herein contained and the right to issue such further order or orders as the circumstances may require.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Board of Trustees of Village of Baldwinsville

v.

Central New York Power Corporation

[Case No. 10411.]

Rates, § 57 — Jurisdiction of Commission — Street lighting service — Existence of contract.

1. The Commission has no jurisdiction over street lighting rates if there is an existing contract for the rendering of municipal service, p. 133.

Rates, § 232 — Municipal contract — Termination — Required notice — Street lighting.

2. Discussion between the parties to a contract for municipal street lighting as to a new agreement does not terminate the existing contract unless by statements or acts there appears to be a mutual agreement to cancel; and the fact that during such discussion a company does not inform a village that it considers the old contract still in effect, or as to the necessity to serve written notice as required by the contract, would not constitute a mutual agreement or understanding that the contract is to terminate or a waiver of the written notice provided for in the contract, p. 133.

Principal and agent — Authority of local manager — Termination of contract — Municipal street lighting.

3. A contract for municipal street lighting would not be terminated without written notice provided for in the contract even though a local manager of the utility company states that the contract will terminate, where it appears that he is not an officer of the company and there is no showing that he is such a representative of the company as can be assumed to have authority to act for the company in declaring the contract terminated, p. 133.

[June 10, 1941.]

BALDWINSVILLE v. CENTRAL NEW YORK POWER CORP.

COMPLAINT *by a village against electric street lighting rates; dismissed for lack of jurisdiction.*

APPEARANCES: W. H. Wormuth, Baldwinsville, Mayor, village of Baldwinsville; Sydney Cooper, Baldwinsville, Attorney, for the village of Baldwinsville; L. Mackler, New York city, Consulting Engineer, for the village of Baldwinsville; LeBoeuf, Machold & Lamb (by Lauman Martin), New York city, Attorneys, for the Central New York Power Corporation.

BREWSTER, Commissioner: The board of trustees of the village of Baldwinsville filed a complaint with the Commission, complaining as to the rates charged by the Central New York Power Corporation for lighting the streets of the village. The complaint referred to a contract between the village of Baldwinsville and the Central New York Power Corporation for street lighting and alleged that it expired November 15, 1940. The complaint was served by the Commission on the Central New York Power Corporation. That company replied by filing an answer stating that it appeared specially on the question of jurisdiction of the Commission. The company alleged that the contract between the village of Baldwinsville and the company for street lighting did not expire on November 15, 1940, and was still in effect.

[1] A hearing was held on April 25th for the purpose of taking testimony to determine whether this Commission had jurisdiction to determine the rates to be charged by the village. Under the practice of the Commission, it will assume jurisdiction where there is no existing contract but cannot under the law assume jurisdiction if there is an existing contract for the rendering of municipal service.

[2, 3] Under date of December 2, 1935, the Syracuse Lighting Company, Inc. (now Central New York Power Corporation), and the village of Baldwinsville executed a contract for the furnishing by the utility company to the village of electricity for street lighting. Article Fourteenth of the contract entered into between the parties reads as follows:

"Fourteenth. This agreement shall be and remain in force for a term of five years from the fifteenth day of November, 1935, through the fourteenth day of November, 1940, and thereafter from year to year unless and until canceled and terminated by either party hereto at the end of the said 5-year term or at the end of any contract year subsequent thereto upon one year's prior notice in writing to the other party hereto of its intention so to do."

It is the contention of the company —and no evidence was introduced at the hearing to the contrary—that neither party served a written notice of its intention to terminate the contract. Clause Fourteenth requires such notice to be served one year prior to its termination.

It appeared from the testimony of Mr. Dudley, an officer of the company in charge of operations in the Syracuse-Oswego Division, including the village of Baldwinsville, that service by the company has been continued to

the village and that monthly bills have been rendered by the company to the village since November, 1940, in a monthly amount of $536.68 which it was stated was in accordance with the contract prices. He also stated that the village had made payments December 17, 1940, January 23, 1941, February 22, 1941, and March 20, 1941, of bills rendered in accordance with the contract prices. It appears that at least one check was marked "paid under protest."

Mr. William H. Wormuth, mayor of the village, testified that about the middle of October, 1940, he discussed with Mr. Schultz, the resident manager of the company in the village of Baldwinsville, the street lighting contract. The mayor told Mr. Schultz that the contract would expire in November and Mr. Schultz said that he would look it up and let the mayor know. The mayor states that two or three days afterwards Mr. Schultz called at the town hall and informed him,—"You are right, the contract expires November 15th," and that the mayor then asked Mr. Schultz for proposals for increased lighting of the village and that thereafter the company submitted such proposals.

Mr. Schultz testifying denied that he told the mayor that the contract had expired.

It appears that new proposals for service, including additional lighting, were presented by the company to the village. It also appears that the company offered to enter into a new contract with the village whereby the service of the present lighting system would be furnished for $290 less per year than under the old contract.

Construing Article Fourteenth of the contract, it seems clear that for either party to terminate this contract at the end of the 5-year period or at the end of any contract year subsequent thereto, one year's prior notice in writing must have been given to the other party. Concededly, no written cancellation notice was served by the village upon the company either one year prior to the expiration of the 5-year period or thereafter.

If no written notice of intention to terminate the contract was served, the contract could be terminated by mutual agreement that the contract had come to an end. It appears that there was discussion as to a new contract both for the existing lighting system and for an improved lighting system. Discussion between parties to a contract of a new agreement does not terminate the existing contract unless by statements or acts there appears to be a mutual agreement to cancel. It is the contention of the village that during the discussion as to a new contract the company did not inform the village that it considered the old contract still in effect or the necessity to serve written notice. This, however, would not constitute a mutual agreement or understanding that the contract was to terminate at the end of the 5-year period or a waiver of the written notice provided for in the contract.

Were there such negotiation and conversations between the parties that it can be said that the utility is estopped from denying that there had been waiver of the necessity of giving one year's notice? I believe that there are no facts in the record upon which such a finding can be made. It is clear that the company did negotiate with the village relative to a new con-

tract and that there was disagreement and no acceptance upon the part of the village of a new contract.

It is true that the mayor states that Mr. Schultz, the resident manager of Baldwinsville, stated after looking the matter up that the contract would terminate at the end of the 5-year period but this is denied by Mr. Schultz. Assuming that the mayor is correct and that Mr. Schultz did make the statement, it appears that Mr. Schultz was not an officer of the company and there is no showing in the record that he was such a representative of the company as can be assumed to have authority to act for the company in declaring the contract terminated. He is not shown to have been a company agent with managerial functions.

We are not now passing upon the merits of the rates and charges made to the village and our decision is limited to the question of whether the contract is still in effect.

It is my opinion that the contract is still in force and that the Commission has no jurisdiction to proceed to fix rates for the street lighting service for the village. An order closing this proceeding accompanies this memorandum.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Mayor of City of Springfield et al.

v.

United Electric Light Company

[D.P.U. 5943, 6321, 6368, 6381.]

Valuation, § 208 — Reserve or standby generating plant.

1. A steam generating plant which has for many years been operated as a reserve or standby unit, while an electric utility purchased power from another company, should be included in the rate base although it is old and its generating equipment has become outmoded by the modern development of more efficient units, where demands made upon the company for electricity could not have been supplied if the plant had not been available at certain times, particularly where the utility has been notified that the supply company will no longer be able to deliver surplus power because of an extraordinary need for electricity and a fuel shortage which has developed during a national emergency, p. 137.

Return, § 11 — Basis — Prudent investment.

2. Capital which stockholders have invested in a utility company, and which in turn has been prudently invested by the company's management in useful plant with which to carry on the business of the company, is entitled to a fair return, and this return is one of the elements which make up the compensatory rates consumers pay for the service—the capital so invested constituting the rate base, p. 137.

Return, § 11 — Prudent investment — Surplus earnings.

3. Surplus earnings of a public utility company properly acquired which are prudently invested in plant are included in the rate base and the company is fairly entitled to a fair return on the surplus so invested, p. 137.

Valuation, § 216 — Site for generating plant

4. Land acquired by an electric company for the construction of a new plant, part of which is used in connection with a high-tension substation and transmission lines and spur tracks, which land may be necessary for the eventual construction of a generating plant, should be included in the rate base when the investment was prudent, p. 140.

Expenses, § 86 — Payments to affiliates — Electric supply — Comparison of rates.

5. An electric utility company receiving its power supply under contract with an affiliated company should receive as low a rate as does another corporation receiving fairly comparable service, and the resulting reduction in operating expenses should be passed on to customers, p. 140.

Rates, § 230 — Contract for street lighting.

6. The Commission should not revise a contract for street lighting service entered into by an electric utility company and qualified officials of a municipality, representing the taxpayers, in the absence of evidence indicating substantial injustice because of excessively high rates, since as a matter of principle a contract between competent and independent parties entered into willingly should not be interfered with by a regulatory body except for adequate and compelling reasons in the public interest, and the sanctity of contracts should not be easily violated or impaired, p. 140.

[June 16, 1941.]

PETITION *for electric rate reduction and for review of contract for street lighting, together with investigation by Department on its own motion as to street lighting rates and price paid for electricity under contract with affiliated company; rate reduction ordered.*

APPEARANCES: Raymond T. King, Special Counsel, James M. Carroll, City Solicitor, and Edward B. Cooley, Assistant Counsel, for the mayor of the city of Springfield; W. Rodman Peabody, David Pokross, Ralph W. Crowell, and Howard W. Brown, for the United Electric Light Company.

By the DEPARTMENT: As the titles indicate these cases all relate to the same subject and are considered together. The principal issue to be decided is whether the United Electric Light Company is charging excessive rates for electricity. We proceed to decide the issues bearing on the main point.

The par value of the outstanding capital stock of the United Electric Light Company is $5,539,375; the premiums paid thereon into the treasury of the company amount to $4,836,971; and the surplus as of December 31, 1940, was $2,080,458; making the total of the stock, premium, and surplus $12,456,804.

In 1939 and 1938 the stock, premium, and surplus were about the same as in 1940. Nearly all the sur-

plus is invested in plant. As of December 31, 1940, the company's investment in plant was $17,760,000 and its reserve for depreciation was $4,270,389. Its investment in plant less the reserves for depreciation was, as of that date, $13,489,611. Included in the last-mentioned sum, however, is plant the acquisition of which was financed by notes aggregating $1,500,000 on which interest is allowed and paid at the rate of 2.9 per cent per annum and on which no return is allowable to the company.

The company's reserves for depreciation were 26.02 per cent of its depreciable property at the end of 1940 and the percentage has been about the same since 1935.

The net earnings of the company for the year 1940 available for dividends were $945,139; a return equal to 7.59 per cent on stock, premium, and surplus. In 1939 the net earnings available for dividends were $1,010,018, a return equal to 8.11 per cent on stock, premium, and surplus; and in the year 1938 the net earnings available for dividends were $930,027; a return equal to 7.48 per cent on stock, premium, and surplus.

In support of the claim of excessive rates made in behalf of the city of Springfield it is contended that much of the company's plant has been fully depreciated and has become obsolete or useless and that the operating expenses of the company can be reduced by a review of the price it pays for electricity which it purchases from the Turners Falls Power and Electric Company. The price the city of Springfield pays the company for street lighting under a special contract is also alleged to be excessive and relief from the charges provided in the contract is sought.

[1–3] It has been strenuously contended for the city that the company's steam-generating plant located at the foot of State street in Springfield "is obsolete and completely depreciated" and that its entire cost should be taken from the plant account and charged to the depreciation reserve. The result would be that this plant, costing $3,656,098 would be removed from the rate base and would therefore yield no return to the company.

The facts do not in the least support the contention against the State street plant. While it is true that the State street steam-generating plant is an old one and its generating equipment has become outmoded by the modern development of more efficient units capable of generating electricity more economically it is, nevertheless, in good operating condition and has for many years been operated as a reserve or standby unit, both used and useful, to insure for the customers of the company a constant and assured supply of electricity in connection with the company's other sources of supply. It is also used as a distributing station. The following table shows the kilowatt hours of electricity generated at the State street plant during the past nineteen years.

Year	Kw. Hr. Generated
1922	51,816,700
1923	61,797,800
1924	62,371,800
1925	46,651,100
1926	67,629,300
1927	42,107,900
1928	37,083,200
1929	76,309,200
1930	35,567,000
1931	26,607,800
1932	6,516,000
1933	65,600
1934	285,700

Year	Kw. Hr. Generated
1935	25,600
1936	23,178,710
1937	19,952,473
1938	4,138,000
1939	29,398,200
1940	71,156,900

From 1932 to 1938 no substantial amount of electricity was generated at the State street plant, but in 1940 it was necessary to generate there 71,156,900 kilowatt hours of electricity, approximately 36 per cent of total requirements. It is decisive of the issue that the demands made upon the company for electricity in that year could not have been supplied by the company had not the State street plant been available to generate much of it. The year 1940 was a low-water year, so-called, and the Turners Falls Power and Electric Company, from which the company purchases most of its electric power, was unable to supply sufficient electricity to satisfy the requirements of the United Electric Light Company. The lack of water in the Connecticut river was the reason. On the other hand, 1938 was a good water year for the Turners Falls Company, consequently little electricity had to be generated at the State street plant. In 1940 the Turners Falls Power and Electric Company generated 234,153,100 kilowatt hours of electricity and in 1938, 340,406,300 kilowatt hours were generated.

The installed electric generating capacity at the State street plant consists of two 5,000-kilovolt ampere turbo-generators installed in 1910 and 1913, respectively, one 20,000-kilovolt ampere turbo-generator installed in 1917, and one 25,000-kilovolt ampere turbo-generator installed in 1921, a total of 55,000-kilovolt ampere of installed generator capacity. The firm capacity of the plant, arrived at by deducting the capacity of the largest generator from the total capacity of the plant, is 30,000-kilovolt ampere or 24,000 kilowatts at 80 per cent power factor. The station's maximum output is limited by boiler capacity to 35,000 kilowatts.

In the face of the present extraordinary need for electricity it is common knowledge that there has developed along the Atlantic Seaboard a fuel shortgage which directly affects the Western Massachusetts Companies. For some years a large quantity of surplus steam capacity has been made available through the Connecticut Valley Power Exchange from the Hartford Electric Company plant in Connecticut. The mercury boiler at Hartford operates best with oil as fuel but in view of the fuel shortgage it was necessary to curtail production. The Connecticut Valley Power Exchange has therefore notified the Turners Falls Power and Electric Company that it will no longer be able to deliver surplus power to the Western Massachusetts Companies. Taken together with the low water conditions so recently prevalent in the Connecticut and Deerfield rivers there exists a definite need for every source of supply of electricity in western Massachusetts.

These reasons, together with others, such as the difficulty of obtaining new generating units, impel us to find that at the present time and under existing circumstances, including the present national emergency, the State street steam-generating plant is an important and necessary unit, both used and useful, and essential to assure for the customers of the United Electric

Light Company an adequate and constant supply of electricity.

This finding is supported by what has now become a well-established principle of rate determination in this commonwealth that capital which stockholders have invested in a utility company and which in turn has been prudently invested by the company's management in useful plant with which to carry on the business of the company is entitled to a fair return. This return on capital so invested is one of the elements which make up the compensatory rates consumers pay for the service the utility furnishes. Capital so invested constitutes the rate base, so-called. As a corollary it follows that property which has become obsolete and is no longer used or useful should be removed from the rate base and placed in an account which does not figure in the price the consumer has to pay. The equities of this principle are readily apparent. The company is not deprived of its rights of ownership in such property but only of a return on it and the consumer is not required to pay a return based upon the original value of the property no longer used or useful. Obsolescence and depreciation are provided for by reserves set up and maintained for those purposes.

A return is permitted on the original investment regardless of the age of particular plant units so long as these units are used or useful and the obsolescence and depreciation of plant are provided for by reserves for depreciation on which no return is allowed but which may be fairly given some weight in determining rates. See Customers v. Northampton Electric Lighting Co. (1933) DPU 4370, 36 PUR(NS) 353.

The result of the application of this principle is that the original value of used and useful plant is maintained and we have fundamentally a stable rate base. Surplus earnings of the company properly acquired which are prudently invested in plant are also included in the rate base and the company is fairly entitled to a fair return on the surplus so invested. Surplus has been determined judicially to be the company's property, therefore the company may declare its surplus as dividends, but if it elects instead to invest it in plant the customers are served by that plant, which may be financed by the issue of capital stock. It is only fair under such circumstances that a return should be permitted as well in the case of surplus prudently invested in plant as in the case of plant which is capitalized by the issue of stock. In other words, plant acquired by the use of surplus as properly belongs in the rate base as plant acquired with the proceeds of a stock issue. Fall River Gas Works Co. v. Gas & E. L. Comrs. (1913) 214 Mass 529, 102 NE 475; Northampton Electric Lighting Co. Case, *supra*.

Upon all the evidence and by the application of the rule stated therefor, we easily come to the conclusion that no reason presently exists for the removal of the State street steam-generating plant from the company's productive plant investment usefully employed in serving the customers of the United Electric Light Company; but on the contrary, that the public interest will be served by its retention.

[4] The land in West Springfield was acquired by the company in 1927 at a time when the demand for electricity was increasing at such a rate as to require new generating capacity by the construction of a new plant. The management purchased the land as the most desirable and available site for the proposed new generating plant. After the land was acquired the company became affiliated with the Turners Falls Power and Electric Company and the contemplated generating plant was not constructed. No contention is made that the company's management acted unwisely in acquiring the land nor do we think that the management can be justly criticized for retaining it. The carrying charges are not large. Part of the land is used in connection with the high-tension substation and transmission lines and spur track leading thereto. It is not at all certain that it may not be necessary for the eventual construction of the steam-generating plant originally contemplated if and when such construction becomes necessary. The investment in this land must still be regarded as prudent.

[5, 6] On October 6, 1937, United Electric Light Company by a special contract effective as of November 1, 1937, agreed to purchase from Turners Falls Power and Electric Company electricity for a period of five years and thereafter until the contract should be terminated upon twelve months' written notice to that effect.

Under the contract United Electric Light Company is required to pay for electricity purchased, as follows:

(a) Service charge of $40,000 a month amounting to $480,000 a year for a guaranteed 20,000 kw. at $24 per kw.
(b) For all kilowatt hours taken up to and including 3,000 times the maximum demand a year at $.006 a kilowatt hour.
(c) For all kilowatt hours in excess of 3,000 times the maximum demand a year at $.004 a kilowatt hour.
(d) In addition, a coal clause charge, so-called, of $.000.1 a kilowatt hour for each cent ($.01) by which the average market value of coal at Springfield exceeds $5 a net ton.

The application of the above rates to the electricity purchased by the United Electric Light Company during the year 1940 resulted in the following charges:

Service charge 12 months @ $40,000	$480,000.00
57,000,000 kw. hr. @ $.006	342,000.00
52,529,000 kw. hr. @ $.004	210,116.00
Coal clause charge	96,115.81
Total	$1,128,231.81

In addition to the electricity purchased under the contract in 1940 the company purchased from the Turners Falls Power and Electric Company 2,730,040 kilowatt hours for $41,950.60 at 15.37 mills per kilowatt hour. The total purchased from Turners Falls Power and Electric Company under the contract and in addition to it amounted to 112,259,040 kilowatt hours for which the company paid $1,170,182.41, an average cost of 10.42 mills per kilowatt hour. This price is said to be excessive.

The applicable statutes are General Laws, Chap. 164, §§ 94A, 94B and 94C inserted by Stats. 1935, Chap. 227.

In the investigation conducted by the Department of the rates, prices, and charges under the contract between the company and the Turners Falls Power and Electric Company, the Department's engineers assumed

and estimated that had a new steam generating plant been erected on land of the company at West Springfield with capacity sufficient to meet the demands upon the company for electricity in the year 1940 substantial savings would have resulted to the company under the cost of purchasing electricity from Turners Falls Power and Electric Company. The company offered competent expert testimony to show that generating units should have been installed, in the hypothetical case, of sufficient capacity to serve not only the company's power requirements for 1940 but also the reasonably expected future increase in demand for electricity and that the appropriate units would result in a cost for power in excess of the amounts paid to the Turners Falls Power and Electric Company. If the premise adopted by the Department's engineers is correct it would follow that the price paid to Turners Falls Company is excessive and, on the other hand, if the company's premise is correct then the price paid Turners Falls Company is reasonable, if this method of comparison is adopted. Whether, in making a comparison of costs by assuming the construction of a new plant as of 1940, all conditions, including demand for service, should be assumed only for the period under consideration, or whether expected future requirements for power should be assumed and considered poses a question which has merit on both sides. We therefore deem it undesirable to decide the principal question involved by recourse to that rationally disputable method. We prefer to come to a decision by making a different comparison.

The United Electric Light Company is the largest purchaser of electricity from the Turners Falls Power and Electric Company, purchasing nearly 32 per cent of the total firm output in 1940, nevertheless it does not enjoy the lowest rate. The Fisk Rubber Corporation of Chicopee purchased from Turners Falls Power and Electric Company in 1940 about 7 per cent of the total firm output, or 26,159,000 kilowatt hours for $224,467.34, a rate of .858 cents per kilowatt hour. This was .184 cents less than the 1.042-cent rate per kilowatt hour paid by the United Electric Light Company. Translated into dollars, the United Electric Light Company would have saved $206,556 in 1940 if it had been charged as low a rate as was the Fisk Rubber Corporation.

The annual service charge of $480,000 places an unjust burden on the United Electric Light Company, during low water years especially, because as the amount delivered by Turners Falls Power and Electric Company to the United Electric Light Company is reduced the price per kilowatt hour increases.

The service to the Fisk Rubber Corporation is, in our opinion, fairly comparable to that furnished the United Electric Light Company, and we perceive no sound reason why the United Electric Light Company, a company affiliated with the Turners Falls Power and Electric Company and its largest customer, should not receive as low a rate as does the Fisk Rubber Corporation.

In defense of its position the company raises four principal distinctions which we proceed to discuss but which do not affect our conclusion. They are, that there is only one point of

delivery to Fisk Rubber Corporation while there are four points of delivery to the United Electric Light Company; that the power factor of the Fisk Corporation is more favorable than that of the United Electric Light Company; that the load factor of the Fisk Corporation is better than that of the United Electric Light Company; and that under the rates in the Fisk contract it would have cost the United Electric Light Company more for its purchased power than under its own contract.

There are four points at which the United Electric Light Company may receive energy from the Turners Falls Power and Electric Company, namely, West Springfield substation, East Springfield substation, Agawam substation, and Feeding Hills substation. It does not appear that much, if any, energy was delivered to the lines at Feeding Hills in 1940. During 1940 the United Electric Light Company purchased 109,529,000 kilowatt hours through the East Springfield and West Springfield substations or approximately 55,000,000 kilowatt hours at each point as compared to the 26,159,000 delivered to the Fisk Company. At each of the two main points of delivery to United Electric Light Company, therefore, approximately twice as much electricity was delivered at each point as was delivered to the one point of the Fisk Rubber Corporation. At the Agawam substation, the fourth point of delivery to United Electric Light Company, 2,730,040 kilowatt hours were delivered in 1940 at an average rate of 15.4 mills per kilowatt hour. The United Electric Light Company owns the substations at East Springfield and West Springfield and in addition to maintaining these 66,000-volt substations, pays for the transformation losses in stepping down the voltage from 66,000 volts to 13,200 volts. The Turners Falls Company delivers and meters the energy delivered to the Fisk Corporation at 13,200 volts and thus absorbs the transformation loss as well as profiting from the fixed and maintenance costs of a substation.

As to the power factor, during the year 1940 the Fisk Corporation did maintain a power factor of 93 per cent to 95 per cent for billing purposes. If the power factor of the Fisk load had dropped to 83 per cent, an additional charge of four-tenths of a mill for each kilowatt hour would have been paid, so that if the power factor of the Fisk Corporation was about the same as the United Electric Light Company the Fisk Corporation cost would have increased only about 4.65 or $10,646. The difference on this ground is relatively unimportant.

As to the load factor, the maximum billing peak of the Fisk Rubber Company in 1940 was 5,850 kilowatts and the consumption for the year was 26,159,000 kilowatt hours. In 1940, therefore, the Fisk Rubber Company had a 1940 load factor of 51 per cent. Under the terms of the United Electric Light Company contract only 20,000 kilowatts are guaranteed for delivery, all excess kilowatts delivered over this amount being at the discretion of the Turners Falls Company. It follows, therefore, that based on a firm delivery of 20,000 kilowatts and of purchased energy of 112,259,040 kilowatt hours the United Electric Light Company had a load factor on purchased energy of 64 per cent com-

pared to a load factor of 51 per cent of the Fisk Company. This disproves the company's contention that the load factor of the Fisk Company makes its load more desirable and deserving of a better rate than United Electric Light Company.

With reference to the company's contention that the Fisk rates would have cost United Electric Light Company more than under its own contract, the chief engineer of the company testified that the average of the four highest peaks of the United Electric Light Company for energy purchased from Turners Falls Company was 39,500 kilowatts and used this figure in computing what the cost to United Electric Light Company would have been if the company had paid for its purchased energy at the rates in the Fisk contract.

What the chief engineer failed to point out was that Turners Falls was not delivering firm capacity of 39,500 kilowatts at that time and could not guarantee to deliver this capacity at all times. The United Electric Light Company contract calls for delivery of only 20,000 kilowatts and it is on this figure that delivery of kilowatts should be based.

The United Electric Light Company pays a service charge of $24 a year per killowatt, whereas the Fisk Company pay only $18 a year per kilowatt. A comparison of the United Electric Light costs in 1940 under the two contracts is as follows:

	United Electric Light Contract	Fisk Contract
Service charge ...	$480,000.00	$360,000.00
Energy charge ...	594,066.60	617,424.72
Coal charge	96,115.81	.....
	$1,170,182.41	$977,424.72

From the foregoing the United Electric Light Company would have saved $192,757.69 if it had purchased under the rates of the Fisk contract.

There remains the matter of the contract between the city of Springfield and the United Electric Light Company for street lighting. This contract was entered into on November 19, 1934, for ten years, was in a form approved by the then city solicitor and was executed by the then mayor of the city of Springfield and approved by the board of supervisors. Following a request by the city to do so, the Department made an investigation of the rates, prices, and charges which the city has been paying the company for electricity purchased for street lighting purposes. This was done in accordance with the provisions of General Laws, Chap. 164, § 94. It is manifest that if the Department, in the exercise of the discretion given it by the statute, should in effect reduce the contract price the reduction would benefit not the customers of the company so much as the taxpayers. The taxpayers of Springfield may fairly be said to have been represented when the contract was signed by its duly qualified officials and in the absence of evidence indicating substantial injustice because of excessively high rates we are of the opinion, as matter of principle, that a contract between competent and independent parties entered into willingly should not be interfered with by a regulatory body except for adequate and compelling reasons in the public interest. The sanctity of contracts should not be easily violated or impaired. No valid reasons appear for our intervention in this case. In the street lighting con-

tract some charges are higher than in other localities and some are lower. However, we are not able to say that in the aggregate the charges are so large as to warrant revision of the contract.

Under existing conditions, the inevitable effect of which on utility companies has been refered to in recent orders of this Department, we are of the opinion that the net earnings of the company cannot be said to be excessive or unreasonable, with a single qualification. The contract between the United Electric Light Company and the Turners Falls Power and Electric Company, two closely affiliated companies as that is defined in General Laws, Chap. 164, § 85 as amended by Stat. 1935, Chap. 335, § 2, provides rates and charges to be paid by the United Electric Light Company for power which are excessive and should be reduced by $200,000. In this connection, it must be observed that no evidence of bad faith was adduced and bad faith must not be inferred. Although the contract was made by affiliated companies it was made in good faith. The reduction will have no substantially detrimental effect upon the financial condition of the Turners Falls Power and Electric Company and it will result in a reduction of the operating expenses of the United Electric Light Company which should be passed on to the customers.

In 1939 the company reduced its rates by $161,000 based on the 1939 revenue. The domestic customers did not share in that reduction. Therefore, it seems only fair that the entire reduction of rates herein ordered should inure to the benefit of the domestic customers of the United Electric Light Company.

Thereupon, after numerous public hearings, investigation, and consideration, it is

Ordered: That the United Electric Light Company file a new schedule of rates and charges for electricity available to domestic customers, which new rates shall result in an estimated reduction in charges to said customers totaling not less than $200,000 per annum, based on 1940 consumption, and said new schedule shall be filed with the Department subject to its approval not later than June 24, 1941, to become effective July 1, 1941.

SECURITIES AND EXCHANGE COMMISSION

Re Manufacturers Trust Company

[File No. 31-494, Release No. 2755.]

Intercorporate relations, § 19.24 — Holding company exemption — Incidental holding company.

1. A commercial banking company owning all the capital stock of a registered holding company and approximately 15.3 per cent of the outstanding voting securities of another registered holding company, already granted

an exemption as a temporary holding company under § 3(a)(4) of the Holding Company Act, 15 USCA § 79c, which applied to the company's situation, cannot be exempted under § 3(a)(3) of the act as an incidental holding company; the presence of the word "temporarily" in subdivsion (4) of § 3(a) negatived any contention that Congress intended that such an institution should receive an unqualified exemption, p. 149.

Intercorporate relations, § 19.25 — Holding company exemption — Temporary holding company.

2. A commercial bank should be granted further exemption under § 3(a)(4) of the Holding Company Act, as a temporary holding company, with respect to its continued ownership of voting securities of subsidiaries where the securities are of questionable value and should not be sold until reorganization and rearrangement of capitalization has been undertaken, p. 149.

Intercorporate relations, § 19.25 — Holding company exemption — Temporary holding company.

3. A commercial bank should be granted further exemption for nine months under § 3(a)(4) of the Holding Company Act, as a temporary holding company, where it has seriously negotiated for the disposal of securities of a public utility subsidiary which is on a sound financial basis and has agreed to make every reasonable effort to divest itself thereof within nine months, p. 150.

[May 17, 1941.]

APPLICATION *for exemption of commercial bank from provisions of Holding Company Act under § 3(a)(3); application denied and further exemption under § 3(a)(4) granted.*

APPEARANCES: E. M. Calkin, for the Public Utilities Division of the Commission; Robert Pulleyn, of Simpson, Thacher & Bartlett, for Manufacturers Trust Company.

By the COMMISSION: Manufacturers Trust Company, a banking institution, owns all of the capital stock of Utility Service Company, a registered holding company, and approximately 15.3 per cent of the outstanding voting securities of New England Public Service Company, also a registered holding company. A prior application pursuant to § 3 (a) (4) of the act, 15 USCA § 79c, was granted by our order dated April 20, 1939, but that order imposed certain restrictions effective December 31, 1940 (see 4 SEC 845, 28 PUR(NS) 196, and Release No. 1504). On December 4, 1940 Manufacturers Trust Company filed a new application for exemption, in this instance pursuant to § 3 (a) (3) rather than § 3 (a) (4) of the act. For the reasons hereinafter set forth, we find that applicant is not entitled to any exemption pursuant to § 3 (a) (3) of the act, but have somewhat enlarged the scope of the exemption heretofore granted pursuant to § 3 (a) (4) of the act.

Utility Holdings of Applicant and Utility Service Company

Applicant owns all of the capital stock[1] and the entire outstanding debt of Utility Service Company; it also owns 200,000 shares of the common stock, representing about 15.36 per cent of the voting securities, of New England Public Service Company.

Utility Service Company owns (1) 48,483 shares of the common stock, representing about 3.72 per cent of the voting securities, of New England Public Service Company, (2) all of the common stock, representing 50.6 per cent of the voting securities, of The Marion-Reserve Power Company, and (3) all of the common stock and 6,621 shares, or 66.2 per cent of the preferred stock, together representing about 92 per cent of the voting securities, of Eastern Minnesota Power Company.

Eastern Minnesota Power Corporation owns all of the common stock, representing about 47 per cent of the voting securities, of Wisconsin Hydro Electric Company.

Brief Description of Holding and Public Utility Companies Involved

Utility Service Company

This company was organized by the applicant in 1932 to hold utility securities which would otherwise have been acquired by applicant primarily as the result of loans made by one of its predecessors to certain subsidiaries of Tri-Utilities Corporation and Middle West Utilities Company. Utility Service Company has always been operated more or less as a department of the applicant. It has never had any securities outstanding in the hands of the public, has never had any management or service contracts with its subsidiaries, and its transactions with them have been limited to a loan of about $156,000 made to Ohio Electric Company[2] which loan was subsequently canceled and to the exchange of 9,101 shares of the preferred stock of the Marion-Reserve Power Company for 3,000 shares of the latter's common stock in connection with a recapitalization effected in February, 1940, with the approval of this Commission. (6 SEC 835.)

The capitalization of Utility Service Company as of October 31, 1940, was as follows:

Long-term debt	$1,348,000	97.96
Capital stock	1,000	.07
Surplus	27,070	1.97
Total Capital stock and surplus	28,070	2.04
Total Capitalization ..	$1,376,070	100.00

During its corporate history Utility Service Company has received a total of $415,299 as dividends on the preferred and common stocks of its subsidiaries. It has never paid a dividend on its capital stock, its income having been used for operating expenses and the payment of interest on the indebtedness owing to applicant. During 1937, 1938, 1939, and the first ten months of 1940, Utility Service Company paid applicant interest in the following amounts, respectively: $47,572, $49,944, $54,669, $45,682. These sums represent all the moneys received by applicant from

[1] Consisting of 10 shares of a stated value of $100 each.

[2] A subsidiary of Utility Service Company prior to its merger with the Marion-Reserve Power Company about October, 1938.

Utility Service Company during these years.

New England Public Service Company

New England Public Service Company, a former subholding company in the Insull dominated Middle West Utilities Company system, has numerous utility and nonutility subsidiaries operating principally in the New England states. About 90 per cent of the common stock of this company is now held in three substantial blocks—one being represented by applicant's direct and indirect holdings, another by about 307,005 shares owned by two subsidiaries of General Electric Company, and the remainder by the holdings of Northern New England Company, a registered holding company. Other than applicant acting as copaying agent for Central Maine Power Company, Central Vermont Public Service Corporation, and Cumberland County Power and Light Company, three subsidiaries of New England Public Service Company, for which its annual remuneration is less than $500, there have been no intercompany transactions between it and said holding company or any of its subsidaries. The last-mentioned company has paid no dividends on its common stock since applicant acquired its present holdings thereof.

As of October 31, 1940, New England Public Service Company had dividend arrearages on its several classes of preferred stock aggregating $18,195,546; its net income for the twelve months then ending was $538,637; whereas its preferred stock dividend requirements for this period were $2,188,319.

On the 11th day of September, 1940, we issued a notice and order for hearing pursuant to § 11 (b) (2) of the act, 15 USCA § 79k, against Northern New England Company and New England Public Service Company. One of the issues which may arise in the pending proceedings resulting therefrom is whether or not the common stock of New England Public Service Company has an equity in the assets or earnings of that company. Our present information indicates that the existence of a substantial equity is doubtful.

The Marion-Reserve Power Company

This company as it exists today is the result of two mergers effected in 1936 and 1938 which brought together several electric utility companies operating in central and northeastern Ohio which were formerly part of the Middle West Utilities Company system.

As of October 31, 1940, the capitalization of the Marion-Reserve Power Company was represented by:

Long-term Debt		
3½% First mortgage bonds	$7,750,000	
2⅞% Serial notes	1,171,875	
	$8,921,875	60.18
$5 Preferred stock—32,306 shs.	3,230,600	21.79
Common stock—33,000 shs.	660,000	4.45
Surplus:		
Capital	910,100	6.14
Earned	1,102,771	7.44
Total Common stock and surplus	$2,672,871	18.03
Total Capitalization	$14,825,346	100.00

For the twelve months ended October 31, 1940, the Marion-Reserve Power Company had gross operating and other revenues of $3,507,610, a net income of $590,450, and earnings applicable to common stock of $427,586.

Applicant acts as transfer agent, registrar, and depositary for the Marion-Reserve Power Company but has had no other transactions with that company except those incident to the payment and discharge of the notes formerly held by applicant which were executed by the predecessors of this subsidiary when they were part of Middle West Utilities Company. We have carefully scrutinized all of these transactions as well as those between Utility Service Company and the Marion-Reserve Power Company and find no evidence of overreaching or unfair treatment.

Eastern Minnesota Power Corporation and Wisconsin Hydro Electric Company.

Eastern Minnesota Power Corporation, a former subsidiary of Tri-Utilities Corporation, furnishes electric energy to approximately 3,500 customers residing in about 25 small towns in eastern Minnesota. It interchanges power with its subsidiary, Wisconsin Hydro Electric Company, which supplies electricity to about 6,500 customers located in western Wisconsin; the latter company also supplies manufactured gas in three towns in that area.

The capitalization of these two companies as of October 31, 1940 was represented by:

Eastern Minnesota Power Corporation		
Long-term debt	$1,500,000	41.45
Preferred stock—$6 no par, 10,000 shares	1,000,000	27.63
Common stock—no par	2,309,399	63.81
Surplus—Earned	(1,190,159)	(32.89)
Total common stock and surplus	$1,119,240	30.92
Total Capitalization	$3,619,240	100.00
Wisconsin Hydro Electric Company		
Long-term debt	$2,077,000	46.28
Preferred stock 6%—$100 par—11,953 shares	1,195,300	26.64
Common stock—no par	1,055,200	23.51
Surplus—Earned	160,031	3.57
Total common stock and surplus	$1,215,231	27.08
Total Capitalization	$4,487,531	100.00

The dividend arrearages on the preferred stock of Eastern Minnesota Power Corporation as of October 31, 1940, amounted to $460,000. For the year ending on that date the company had a net income of $13,852; its annual preferred stock dividend requirements were $60,000. It will be noted that there is a substantial earned surplus deficit, and it was testified that under the applicable state law the company can only pay dividends out of earned surplus. Utility Service Company has not received any dividends on the preferred stock of Eastern Minnesota Power Company since March 1, 1933, and has never received any dividends on its common stock holdings in this company.

The dividend arrearages on the preferred stock of Wisconsin Hydro Electric Company aggregated $388,472 as of October 31, 1940. The net income of this company for the preceding twelve months was $65,110; the preferred stock dividend requirements for the period were $71,718. Partial dividends were paid on the

preferred stock in the years 1936–1939 inclusive, but none were declared in 1940. No dividends have been paid on the common stock since the company was a subsidiary of applicant.

On March 26, 1932, applicant loaned Wisconsin Hydro Electric Company $55,000; this loan was repaid on April 25, 1932. There have been no other intercompany loans between applicant or Utility Service Company and Eastern Minnesota Power Corporation or its subsidiary. Applicant acts as transfer agent, registrar, coupon-paying agent, and depositary for there two companies.

Applicant's witness testified that although the present management had as yet made no changes in the amount of outstanding securities of Eastern Minnesota Power Company that it had laid "the groundwork for eventual clean-cut capitalization by eliminating from its books much in the way of doubtful plant account";[3] that the reorganization of both Eastern Minnesota Power Corporation and Wisconsin Hydro Electric Company had been considered but no definite plans therefor had yet been formulated; and that although it was "highly doubtful"[4] that Utility Service Company as a holder of Eastern Minnesota Power Company common stock would be entitled to anything in a reorganization except the "right to put in a little more money," there would be assets applicable to the common stock in a reorganization of Wisconsin Hydro Electric Company.

Disposition of Application

[1] In view of the fact that there is no functional relationship between the applicant's primary business, that of a commercial bank, and the operation of electric and gas utility companies located in New England, Ohio, Minnesota, and Wisconsin and because of the almost specific application of subdivision (4) of § 3 (a) to applicant's situation we cannot find that applicant is "only incidentally a holding company" which finding is necessary to the granting of the present application.[5] It is therefore denied.

The presence of the word "temporarily" in subdivision (4) of § 3 (a) unequivocally negatives any contention that Congress intended that an institution such as the applicant should receive an unqualified exemption from the provisions of the act. In other words, the language of the entire paragraph clearly denotes a desire to give an applicant thereunder a reasonable time in which it might dispose of its public utility or holding company securities without being subject to the act. It is our opinion that generally speaking the continued retention of the control of a financially sound public utility company by an institution such as the applicant is in conflict with the policy of the act and is detrimental to the public interest and the interest of investors and consumers. On the other hand, we are equally cognizant of the harmful effect upon those same interests of the distribution of securities of a problematical value.

[2] Consequently, it is obvious

[3] Transcript 16.
[4] Transcript 64.
[5] See Re Cities Service Co. (1940) Holding Company Release No. 2444, 36 PUR(NS) 257.

that in dealing with applicant's situation recognition must be accorded the fact that a wide disparity exists in the character of the securities owned by applicant and its wholly owned subsidiary, Utility Service Company Considering the application under the provisions of § 3 (a) (4) of the act, we are of the opinion that a further temporary exemption is appropriate under that section.

We believe that the common stock of New England Public Service Company is presently of such questionable value that it should not be sold until we have determined the issues inherent in the pending § 11 (b) (2) proceeding with respect to said holding company. Applicant has agreed that unless at a subsequent date we specifically consent to the disposition of its present holdings (both direct and indirect) in New England Public Service Company it will retain the same until we have approved a plan for the reorganization of that company.

With regard to applicant's interest in Eastern Minnesota Power Corporation—the record discloses a need for the rearrangement of the capitalization of both this company and its subsidiary, Wisconsin Hydro Electric Company. Until that occurs the value of the securities of these companies is conjectural and a public sale of the same highly undesirable. Applicant has agreed to commence taking the steps necessary to improve the financial structure of these subsidiaries within six months from the date hereof.

[3] The situation as to the Marion-Reserve Power Company is fortunately not comparable with that of the other public utility subsidiaries. That company is now ostensibly on a sound financial basis with substantial assets and forecast earnings applicable to its common stock. The record discloses that applicant has had at least three offers to purchase this stock at prices which cannot be considered wholly unreasonable. A continuing unlimited exemption of applicant's interest in the Marion-Reserve Power Company in its present condition is contrary to the intent of § 3 (a) (4). But inasmuch as there is evidence that applicant has seriously negotiated for the disposal of such interest and because it has agreed to make every reasonable effort to divest itself thereof within nine months from this date we deem it proper to grant a further exemption for a period of nine months from the date hereof.

In view of the substantial period which has already elapsed since applicant acquired a beneficial interest in the securities of its holding company subsidiaries, the question arises as to appropriate limitations to the exemption particularly as to restrictions concerning intercompany dealings between the bank and its subsidiaries.

Our order dated April 20, 1939, 4 SEC 845, 28 PUR(NS) 196, granted the bank exemption subject to the restrictions which, under the terms of Rule U-3A3-1, were to become effective on January 1, 1941. Paragraph (b) of that rule provided restrictions as to voting the securities of such subsidiaries, loans, deposits, and entering into other transactions with such subsidiaries, in case the bank had been the beneficial owner of the securities

in question for a period exceeding two years.[6]

The current Rule U-3 terminates any exemption under the rule after the bank has had such beneficial ownership for more than two years, leaving the scope of the exemption, if any, to be determined by order in each particular case.

In reëxamining the problem of conditions, in the light of the facts disclosed in the present record, we have reached the conclusion that some modification is appropriate as to the restrictions imposed in our prior order.

In the case of the New England Public Service Company, voting control is in the common stock and is shared by the bank, the Northern New England Company and the General Electric Company. Pending the reorganization of New England Public Service Company under § 11 (b) (2) of the act, it does not appear to be necessary to limit the bank in voting its holdings in New England Public Service Company. In view of the limited nature of applicant's present services as copaying agent for the three subsidiaries of New England Public Service Company, we do not consider it necessary to compel a severance of this relationship, we do, however, deem it appropriate to continue the limitations imposed by our order of April 20, 1939, *supra,* upon that holding company and its subsidiaries, except the foregoing, and our order herein will so provide.

In the case of the Marion-Reserve Power Company and Eastern Minnesota Power Corporation, the companies involved are comparatively small, and in view of the prospects for speedy termination of the bank's control, we do not deem it necessary that there be any limitations upon the exemption except as to its duration. In that respect our prior order will be modified.

An appropriate order will issue.

ORDER

Manufacturers Trust Company having filed an application pursuant to § 3 (a) (3) of the Public Utility Holding Company Act of 1935 for an order exempting it from the provisions of said act; a hearing having been held thereon after appropriate notice; and the Commission having considered the record of said hearing and made findings based thereon;

It is hereby *ordered* that said ap-

[6] The text of the provision in question follows:

"Provided, however, That after January 1, 1941, the exemption in this rule shall not be applicable to a bank which before or after such date for a period exceeding two years has continuously been and thereafter remains, directly or indirectly, the beneficial owner of 10 per cent or more of the outstanding voting securities of a public utility company or holding company, if after January 1, 1941—

"(1) Such bank, or any person acting for or controlled by such bank, votes, by proxy or otherwise, for directors or upon any other matter any public utility company or holding company securities owned by it for such period, except in favor of a matter which has been or will be the subject of a declaration or application filed with the Commission under the act; or

"(2) Such bank makes or, except after an order of the Commission, with notice and opportunity for hearing, renews any loan to such public utility company or holding company or any associate company thereof, or enters into any other financial transaction with any such company; or

"(3) Such bank receives deposits from such public utility or holding company or any associate company thereof, or acts as trustee under any indenture to which any of such companies is a party, or as transfer agent for securities of any of such companies, or in any other manner as financial agent for any of such companies."

plication be and the same is hereby denied;

It is *further ordered* that the third paragraph of our order dated April 20, 1939, in Re Manufacturers Trust Co. File No. 31–178, Holding Company Act Release No. 1504, *supra,* which is in the following words.

"It is *ordered* that Manufacturers Trust Company be and is hereby exempted from all of the provisions of the Public Utility Holding Company Act of 1935 applying to holding companies, subject to the limitations imposed by Rule U-3A3-1, as now in force or as hereafter amended, to the same extent as banks granted a general exemption thereunder; and" be and the same is hereby changed and modified in the manner hereinafter designated;

It is *further ordered* that Manufacturers Trust be and is hereby exempted from all of the provisions of said act applying to holding companies with respect to its direct and indirect ownership of the voting securities of Utility Service Company, the Marion-Reserve Power Company, and Eastern Minnesota Power Corporation for a period of nine months from the date hereof at which time said exemption shall terminate;

It is *further ordered* that said Manufacturers Trust Company be, and hereby is, exempted from the provisions of said act otherwise applicable to such company as a holding company by reason of its direct or indirect ownership of the voting securities of New England Public Service Company, and subsidiary companies thereof, except the provisions of § 4 (a) (3) of said act in so far as it relates to the sale or other disposition by said Manufacturers Trust Company of the voting securities of New England Public Service Company, upon condition, however, that said Manufacturers Trust Company shall not, except upon approval by this Commission by order, make or renew any loan to, enter into a financial transaction with, receive deposits from, act as trustee under any indenture of, act as transfer agent for any securities of, or in any manner act as financial agent for, said New England Public Service Company, or any of its subsidiary companies, other than to the extent that said Manufacturers Trust Company is now acting as copaying agent for Central Maine Power Company, Central Vermont Public Service Corporation, and Cumberland County Power and Light Company; and

It is also *ordered* that the jurisdiction of this Commission is hereby reserved for the purpose of entering such further orders as may from time to time be deemed appropriate.

Re Indian Hills Water System Association

[Application No. 5462, Decision No. 16989.]

Expenses, § 23 — Capital charges — Pump and well deepening.

1. Expenditures for a new pump and for deepening a well should not be included as an operating expense of a water company, as such items are capital charges, p. 155.

Expenses, § 118 — Uncollectible charges — Water utility.

2. Uncollected bills to the amount of 14.24 per cent of sales by a water company were held to be entirely too high and 2½ per cent was considered ample, p. 155.

Valuation, § 270 — Land — Market value.

3. The market value rather than estimates based upon the asking price of land and water rights is the best criterion to determine their value in fixing a rate base, p. 155.

Depreciation, § 82 — Water company — Percentage of value.

4. A depreciation allowance of 5 per cent of a water company's undepreciated value rather than 10 per cent thereof was held reasonable, p. 155.

Return, § 115 — Water utility.

5. A return of 7 per cent was deemed reasonable for a water company, p. 158.

[April 15, 1941.]

APPLICATION *of water company to increase rates; increased rates authorized.*

APPEARANCES: Morris Rifkin, Denver, for the Indian Hills Water Association; Hanley A. Calvert, Denver, for protestants; E. B. Evans, Jr., Denver, for the Public Utilities Commission of the State of Colorado; George A. Scruggs, Denver, pro se.

By the COMMISSION: On September 7, 1940, the Indian Hills Water System Association filed an application with the Commission to increase its water rates 25 per cent over its present schedule of rates, alleging as reason therefor that said increase is necessary to provide the association with funds for making such improvements as may be needed for supplying adequate service to its customers, and for making necessary repairs to the water plant.

Due notice of this application was served on the customers of the association, and on September 14, 1940, the Commission received a letter from Hanley A. Calvert, one of said customers, protesting the proposed increase in rates, and urging that the increase should not become effective for the year 1941 or until it is clearly

demonstrated that the users are receiving adequate water service. Later, a letter was received from the Indian Hills Improvement Association, of which George A. Scruggs is president, protesting the increase in rates, on the ground that the raise in rates cannot be justified because an adequate supply of water is not assured.

The Commission thereupon set the matter down for hearing at its hearing room, 330 State Office Building, Denver, Colorado, at 10 o'clock A. M., on January 23, 1941, at which time and place said matter was duly heard.

Dr. Samuel Towbin, secretary and manager, testified for the Water System Association. It appeared that said Water System Association, by purchase, on June 20, 1940, acquired the Indian Hills Water System, which supplies domestic water to Indian Hills, paying the sum of $2,500 for the property; that, although there are a few permanent residents, for the most part, patrons of said water system are owners of summer cottages, who have built said cottages along Parmalee gulch and the area along Turkey creek, where it is joined by said Parmalee gulch; that the area is covered of three plattings, known as "First Filing, Second Filing, and Fifth Filing," each of said filings being supplied with water from a different source, all said sources and distribution systems, however, being a part of the Indian Hills Water System, that First Filing and Second Filing are supplied from wells installed in the gulch; that the Fifth Filing is supplied from reservoir, which is fed by springs; that water from said sources of supply is pumped to four tanks, of 10,000-gallon capacity each, said tanks being so located as to furnish adequate pressure. The entire area served covers about 1,200 acres, the three filings extending a distance of approximately 3 miles, the First Filing being at the lower end of the gulch; the Second Filing next up the gulch, and the Fifth Filing at the head of the gulch.

Dr. Towbin stated that, from time to time, there had been shortages of water in section known as "Filing No. One"; that, possibly, said shortages were due to drouth conditions; that such shortages occurred in July and August of 1940; that there was some shortgage of minor degree in Filing No. 2; that, after the system was purchased, he sought to improve the situation and, in September, 1940, deepened the well in Filing No. 1 to a total depth of 20 feet. The flow of water was increased, and he hopes it will be sufficient in future seasons to care for the needs of customers in said Filing No. 1; that, in the event it does not adequately care for their needs, other arrangements will be made; that approximately 3,000 gallons, Monday to Friday, inclusive, and 5,000 gallons on Saturdays and Sundays during service season, extending from May 10th to October 10th, are necessary in "First Filing"; that, if further changes or extensions are necessary, it is possible to put down another well further up the gulch on Filing No. 1, which would cost from $750 to $1,000. This might not help, because water might be taken which, otherwise, would go to well now in use, although a small auxiliary well was "hooked up" last summer, which produced about 500 gallons daily; that also, perhaps water could be piped from Filing No. 5, but it is believed

that the cost of three miles of 2-inch pipe makes this plan impossible.

The plan which seems to appeal to him as the best one is to haul water with a tank truck from No. 5 Filing to Filings Nos. 1 and 2, when shortages occur. He stated that a tank truck can be purchased for $1,000; that cost of operation would amount to $150 per year; that a truck can be rented for about $3.50 per day, and the cost should not be in excess of $150 per year.

Judge Calvert, John Rankin, and George Scruggs, all of whom own cottages in No. 1 Filing, testified in opposition. Mr. Scruggs, besides appearing in his own behalf, also testified as president of the Indian Hills Association, said association being composed of summer residents of Indian Hills. They were not concerned so much with the increase in rates contemplated as they were with the service that is to be furnished. They complained that, for a number of years, water supply had been inadequate, and that, from the first of July on, practically no water was furnished; that an increase in rates should not be permitted until the service is made adequate; that, in their opinion, the deepening of the well in No. 1 Filing, or the furnishing of water by means of a truck will not insure a dependable, adequate supply of water; that the present owners should invest additional funds to provide that service; that said capital should not be supplied by customers through increases in rates; that additions should be considered as an investment charge.

The Commission's engineer, who, under the direction of the Commission, investigated this matter, submitted his findings in writing. His report fixed the reproduction value new of the plant, including land and water rights, at $20,520.32, with a depreciated value of $14,657.93, as of November, 1940. He found that the water available for serving the customers of the system is limited by the drainage area, and he doubts that additional wells in Parmalee gulch would increase the total amount of water. As a temporary measure, he approves the plan proposed by Dr. Towbin of the use of a tank truck in emergencies. It is his opinion that additional storage tanks or reservoirs should be constructed to furnish additional water in Filing No. 1, and No. 2, the present supply there available being inadequate. He believes that the matter of service is the important factor to be considered by the Commission.

[1–4] A financial statement was submitted by Dr. Towbin, as of date December 31, 1940, which showed assets of $7,808.65, a valuation of $2,629.17 being fixed for depreciated value of station equipment, pipe lines, and tanks, land being valued at $5,042. Against the assets, liabilities of $16,988.21 are set up, which consist of $16,155 outstanding capital stock, notes payable of $250 (which, in part, cover cost of additions to property account), Federal insurance, $12.50, accrued officers' salaries, $500, property tax $70.71. Profit and Loss Statement, as submitted, shows an apparent net loss for the year 1940 of $1,984.28. Receipts for the year, including $250 borrowed money, amounted to $2,073.50. Expenditures, including sum of $580.67 ($200 being for a new pump, and $380.67 for deepening well on Filing No. 1)

totaled $2,055.60. Also included were charges of $62.39 for material and supplies, and $87.45 for miscellaneous expenses, which items were not broken down. It did not appear whether, like the item of $580.67, they should or should not, in whole, or in part, have been charged to capital account. Also, statement of cash receipts and disbursements shows $55.31 paid for insurance and bond premiums, while profit and loss statement shows $20.93 as proper amount to be charged for this item to operating expenses for 1941, although the assets statement shows only $21.88 credited to prepaid insurance. Also, it should be noted that earned water service rent in profit and loss statement shows total of $1,882, with $268, or 14.24 per cent listed as bad debts, or uncollected. If this is correct, amount collected should have amounted to $1,614, but the cash receipts and disbursements statement shows the sum of $1,730 received on account of water rental for 1940.

Considering profit and loss statement and statement of receipts and expenses for year submitted by Dr. Towbin, as aforestated, the item of $580.67 should be deducted from expenses for the year 1940; $34.38 should be deducted from amount expended for insurance and bond premiums. The item of $75 for traveling expense would seem to be excessive. We presume that it covers cost of an occasional trip by a supervising officer from Denver to Indian Hills and return, and may be an arbitrary charge. However, the matter was not gone into at the hearing, and we have no means of determining what charge is proper, but believe it should be cut down, for with conditions of property improved, less supervision will be necessary. Also, if trips were made to supervise installation of new pump and to deepen well, a part of expense should go to capital account. These items will raise the net on 1940 operations at least $650. Part of the items of $87.45 for miscellaneous expense, $30.10 for accounting and auditing, and $12.50 for stationery and supplies for office, and bank analysis, probably are non-recurring charges. We do not have sufficient information to exclude them. The sum of $268, or 14.24 per cent of sales shown in profit and loss account represent uncollected bills. This amount is entirely too high for a utility, especially one serving the class of customers served by this utility. Two and one-half per cent should be ample. In the balance sheet, land value is fixed at $5,042. At the hearing, Dr. Towbin testified that land was practically valueless; that he had been offered large number of lots at $65. Probably the valuation placed on land was intended to include water rights. Our engineer fixed the valuation of land and water rights at $3,250, being $1,250 for lots, and $2,000 for water rights, and stated that he did not have accurate information as to values—that they were merely estimates, based on the asking price for lots now owned by the association and some information obtained from state engineers' office as to what price amount of water decreed to applicant's predecessor ordinarily brought in other localities in the state. We cannot agree that values of land and water rights should be so determined, or that values apparently arbitrarily fixed by applicant

should be accepted as correct. The market value is the best criterion to determine value of land (and water is real property in this state) in fixing a rate base, is too well established to warrant discussion at this time. The applicant purchased all land, water rights, and plant equipment for a total price of $2,500 on June 20, 1940. There was no testimony showing that such price did not represent the full value of land, water rights and plant equipment on the date of purchase. Nor was any showing made that such value has been enhanced since that time, or that a probable enhancement in near future is expected. The proportion of the purchase price which is allocable to land and water rights was not shown, and we are unable to find any basis for distribution of the purchase price to the various plant accounts, or to approve applicant's figures. As against depreciated value of $7,671.17 shown in the balance sheet, applicant has issued $16,155 in stock. It paid $2,500 for the property. Additions in 1940 amounted to $580.67. The sum of $1,112.05 is deducted in profit and loss statement for depreciation. This is 10 per cent of undepreciated value of $11,120.53 shown in financial statement. Our engineer's report shows useful life figure of sixty years for pump houses, forty years for tanks, pumps and mains, respectively, and seventy-five years for wells and reservoirs, with a depreciation allowance of 20 per cent for pump houses, wells, and reservoirs, 25 per cent for pumps, and 40 per cent for tanks and mains, which means that said property, in the aggregate, in his opinion, still has a useful average life of about thirty-five years, which would require an allowance of about 3 per cent yearly, if amount were to be determined by cost of property. Ordinarily, if we had been valuing this plant at time of construction, we would allow about 2½ per cent yearly depreciation on depreciable property used and useful, which would amount to $278.01 a year on valuation fixed by the association. We believe that a depreciation charge of 10 per cent taken by applicant before depreciation of $11,120.53 fixed in applicant's balance sheet, is not justified. Such amount would permit it to charge off plant in two and one-half years, if actual cost to it is considered, and is wholly out of line with useful life expectancy of property. Moreover, if such charge for depreciation is proper now, it would have been proper as a yearly charge from time plant was constructed, in which event plant should be entirely depreciated, since it is more than ten years old. If we allow 5 per cent yearly for depreciation on amount paid for entire property (not excluding nondepreciable items whose value we cannot determine from evidence) we believe applicant would have no reason to complain. In the instant matter, neither the estimate of reproduction cost new, less depreciation, nor the applicant's book value, less depreciation, are convincing. They are inconsistent and unreconcilable with the recent market value of the property. The applicant's book value, the book value of common stock, and the estimate of reproduction cost have been considered, and are found to be inconsistent with the actual cost of the property to applicant, and are not

considered as just and reasonable values upon which a rate structure should be built in this case. No evidence of original cost of the property having been offered, we are limited to the use of the market value of the property at the time of acquisition, June 20, 1940, which amount, plus subsequent additions, amounting to $580.67, we find to be the fair value rate base at the present time.

The item of $500, carried on books as nonpaid charge for officers' salaries, would seem to be excessive. No attempt to justify it was made. The man who did the work at the plant, in prior years, was paid $100 per month. Amount paid for same service apparently was raised to $125 per month. He now receives $767. An officer, or officers, for superintending for six months this man and the affairs of a $3,000 company, doing a business of approximately $1,800 yearly, wants $500. No evidence was offered as to amount or value of service performed by them. Twenty-five dollars per month, or a total charge of $150, should be ample. Claim was not made for allowance for going concern value or working capital, so an allowance cannot be made. Use of a water tank truck, as suggested by the association, can be only a temporary expedient. We could not approve such an expenditure for purchase of tank truck as an item to be included in either capital account or maintenance. Even if it were a proper charge to capital account, the association cannot expect its customers to buy the tank for it and, in addition, as suggested, include the item in capital account. The rental of a truck at $3.50 per day for use in emergencies perhaps could be justified as a temporary operating expense. We say "temporary" because the association should provide an adequate supply of water at all times through construction of facilities that guarantee such a continuous supply. The Commission is of the opinion that applicant should construct a reserve storage reservoir, sufficient in capacity to take care of any deficiency that may occur in the water plant of this water system, and to provide for any increase in the demand for water that may occur as the summer resort is further developed. Our engineer stated that such water for storage purposes is available in the spring of the year. The cost of reservoir would be a proper item to include in rate base, but, of course, association cannot expect its customers to pay for the reservoir. Other means of financing must be found. Dr. Towbin estimated the cost of a rental truck for the season would be about $150. This should be ample, for it appears that water shortage occurred only during a few months in the year, and then chiefly on Saturday and Sunday.

[5] We believe a reasonable and adequate rate of return herein, considering yield of corporate bonds and stocks, the yield of government bonds, and interest rates in utility field, is 7 per cent.

The schedule hereafter set forth constitutes a fair and reasonable allowance to respondent for charges to annual operating expenses, so long as conditions remain as they now are, in the future, should not exceed the following:

Truck rental and expense—temporary	$150.00
Payroll tax	15.10
Material and supplies	*62.39
Power	203.83
Salaries	754.50
Officers' compensation	150.00
Stationery and supplies	*12.50
Insurance and bond premiums	20.93
State corporation tax	15.00
Miscellaneous expense	*87.45
Capital stock tax	4.40
Accounting and auditing	*30.10
Legal expense	**35.00
Traveling expenses	**50.00
Telephone expense	3.25
Bad debts (approximately 2½% of $1,998.00)	50.00
Property tax	70.71
Total	$1,715.16

*Items not broken down, but allowed.
**Items not broken down, but allowed in part.

To this figure should be added depreciation charge of 5 per cent of $3,080.67, or $154.04, and the sum of $215.65, being 7 per cent of $3,080.67, which the Commission has found is an adequate return on the rate base shown herein. Upon that basis, the total revenue requirement of this utility to produce the above rate of return is as follows:

Gross operating expense	$1,715.16
Depreciation	154.04
7% return on rate base	215.65
Revenue requirement	$2,084.85

Assuming that the revenue will not be less than it was in 1940, and with better supervision of accounts, the association should collect $1,998, being $1,730 collected, plus $268 in bad accounts, less deduction of $50 allowed for bad debts, which would produce an actual revenue of $1,948. This amount deducted from the annual revenue requirement heretofore set forth leaves a net annual deficit of $136.

While we included a number of doubtful items in the statement of operating expense properly chargeable by applicant in the future, we, perhaps properly, could have increased allowance made for some items. Too, perhaps we may have overestimated amount of net revenue to be anticipated. Applicant should have some margin between anticipated income and outgo. An increase of 12½ per cent over the presently effective rates, would, on figures aforesaid, produce about $250 increase in revenue yearly, and would permit applicant, with present facilities, supplemented temporarily by tank truck, to furnish adequate service, pending construction of additional storage facilities.

Applicant, in filing a new rate schedule, in compliance with order hereafter made, should amend its proposed classification of service by adding after the words "bath tub" in the sixth line of sheet 2, as submitted, the words "or shower," and the same words, "or shower," after the word "tub" in the seventh line on said sheet 2, and should show that the rates proposed in the twelfth and thirteenth lines of the classification on Sheet 2 apply to hotels, only, as stipulated by counsel at the hearing.

Therefore, after a careful consideration of the record, the Commission is of the opinion, and finds, that increase of 25 per cent in water rates proposed by applicant should be disallowed; that in lieu thereof, applicant should be allowed to increase his existing rates an amount equal to 12½ per cent thereof, upon the classifications shown in sheets 2 and 3 of his proposal, amended, as hereinbefore set forth.

PENNSYLVANIA SUPERIOR COURT

Burgess and Town Council of Borough of Pottstown

v.

Pennsylvania Public Utility Commission

(— Pa Super Ct —, 19 A(2d) 610.)

Municipal plants, § 20 — Acquisition — Necessity of Commission approval.

1. A municipality seeking to acquire the works and plant of a water company which is reluctant to sell and convey them must secure a certificate of approval from the Commission in the first instance, p. 162.

Municipal plants, § 26 — Acquisition — Procedure — Statutory change.

2. A municipality's application for a certificate evincing Commission approval of its acquisition of the works and plant of a water company having been filed while the Public Service Company Law was in force and effect, it was the Commission's duty to proceed with the pending application just as if that law were still effective and to follow the procedure prescribed by the courts for such cases, notwithstanding that such law was superseded and repealed by another act before the proceedings were terminated, p. 164.

[April 16, 1941.]

APPEAL *from order denying petition to secure a certificate approving municipal acquisition of a water company's plant and property; reversed and remanded. For Commission decision, see 35 PUR(NS) 253.*

Argued before Keller, P. J., and Cunningham, Baldrige, Stadtfeld, Rhodes, and Hirt, JJ.

APPEARANCES: C. Edmund Wells, of Pottstown, and John W. Hoke and Edmund C. Wingerd, both of Chambersburg, for appellant; Herbert S. Levy, Assistant Counsel, and Harry M. Showalter, Counsel, both of Harrisburg, for appellee.

KELLER, P. J.: This appeal is concerned (1) with the procedure to be followed by a borough which seeks to acquire the ownership of the works and property of a company furnishing water to the public in the borough, with special reference to the time when it must secure the consent of the Public Utility Commission to such acquisition. And, also, (2) how this is affected by the fact that the proceedings for the acquisition of such property were begun when the Public Service Company Law of July 26, 1913, P. L. 1374, 66

PS § 1 et seq., and its amendments and supplements were in force and effect, but were not completed on June 1, 1937, when the Public Utility Law of May 28, 1937, P. L. 1053, 66 PS § 1101 et seq., which superseded and repealed it, went into effect.

The proceeding was instituted under clause 7 of the 34th section of the Corporation Act of April 29, 1874, P.L. 73, p. 95, 15 PS § 1353, which, in part, reads as follows: "It shall be lawful, at any time after twenty years from the introduction of water or gas, as the case may be, into any place as aforesaid, for the town, borough, city, or district in which the said company shall be located, to become the owners of said works, and the property of said company, by paying therefor the net cost of erecting and maintaining the same, with interest thereon at the rate of 10 per centum per annum, deducting from said interest all dividends theretofore declared."

Article III, § 3, of the Public Service Company Law, 66 PS § 182, provided, inter alia, as follows:

"Upon like[1] approval of the Commission first had and obtained, as aforesaid,[1] and upon compliance with existing laws, and not otherwise, it shall be lawful— . . .

"(c) For any public service company to sell, assign, transfer, lease, consolidate, or merge its property, powers, franchises, or privileges, or any of them, to or with any other corporation or person.

"(d) For any municipal corporation to acquire, construct, or begin to operate, any plant, equipment, or other facilities for the rendering or furnishing to the public of any service of the kind or character already being rendered or furnished by any public service company within the municipality."

On June 9, 1936, while the Public Service Company Law was in force and effect, the Borough of Pottstown filed its petition with the Public Service Commission asking it to issue its certificate of public convenience approving the acquisition by the borough, under the provisions of the Act of 1874, aforesaid, of the water plant and property of the Pottstown Gas & Water Company, which had been furnishing water to the public within said borough for more than twenty years.

After various proceedings, not necessary to be recited here, the Public Utility Commission—which had succeeded to the Public Service Commission under the provisions of the Public Utility Law—on March 27, 1939, determined that the applicant was not required under the Public Utility Law to obtain a certificate of public convenience evidencing its approval of the proposed acquisition and held that the application was outside the Commission's jurisdiction

Following the filing of a petition for a rehearing, the Commission on September 1, 1939, notified the borough that if it would amend the form of its application to one seeking approval of the transfer of the water plant of the Pottstown Gas & Water Company to the Borough of Pottstown, under § 202(e) of the Public Utility Law,

[1] This refers to § 2 of the same article, 66 PS § 181, which provided: "Upon the approval of the Commission evidenced by its certificate of public convenience, first had and obtained, and not otherwise, it shall be lawful," etc.

66 PS § 1122, it would take jurisdiction and would then issue an order rescinding its previous action and proceed with the determination of the case on its merits. This suggestion was complied with and the amendment made, but on July 31, 1940, 35 PUR (NS) 253, the Commission filed its report and order denying the petition, on the ground that it lacked jurisdiction to consider and grant it. The borough appealed.

[1] It will be noted that the Public Service Company Law did not prescribe when or at what stage in the legal proceedings, which the municipal corporation institutes to acquire the works and property of the public service company, it was required to obtain the approval of the Public Service Commission—as evidenced by its certificate of public convenience—to the acquisition by it of the works and property of the public service company.

A like uncertainty had existed before the passage of the Public Service Company Law as to the legal procedure to be used under the Act of 1874, *supra,* when a municipality was desirous of acquiring the works and property of a company which had furnished water or gas to the public within its limits for twenty years, pursuant to the seventh clause of § 34 of the Act, 15 PS § 1353, and it was necessary to obtain information respecting such cost and the declaration of dividends, etc., in order that the municipality might determine whether it could constitutionally borrow the money required for such acquisition. This latter uncertainty was resolved by the supreme court in the case of Williamsport v. Citizens' Water & Gas Co. (1911) 232 Pa 232, 81 Atl 316, which ruled that a preliminary mandamus, and not a bill in equity, was the appropriate remedy to obtain the books and records of the company for the purpose of securing the necessary data, and also, if desired, to make a physical examination of the company's works and property. It was held, however, that in this preliminary mandamus proceeding a subsidiary issue was first involved respecting the question of the municipality's financial ability under the law to purchase the plant, and this, in turn, raised issues as to the assessed value of the city's real estate, the amount of its indebtedness and its borrowing capacity, in addition to the issue as to the cost of the plant, its maintenance and the dividends declared; for a mandamus would not issue for a vain or useless purpose or merely to satisfy curiosity. Hence if on such a preliminary proceeding the evidence plainly showed that the works and property of the company greatly exceeded in value the amount which the municipality could raise under the law, it was not in a position to make the purchase, and hence was not in a position to force the company to submit to an investigation of its books and properties. But where it could be shown that the probable price which would have to be paid for the company's property was within the borrowing capacity of the municipality or approximated it, the mandamus would issue to enable the municipality to make a full investigation and, after securing sufficient knowledge to qualify it to submit an intelligent offer, if that offer should be refused, the plaintiff could demand another or second mandamus to com-

pel the company to convey its plant to the municipality upon payment of the estimated price. The company could then take issue on the figures submitted by the municipality, and there would be a common law trial to adjudge the issues thus raised.

To compel the municipality to embark upon the second mandamus, or even go into the main issue of the first mandamus proceeding, until a preliminary examination of the subsidiary issues involved in the first mandamus had determined whether there was a likelihood of the municipality's borrowing capacity at least approximating the amount required to be paid for the company's works and property was held by the supreme court to be a sheer waste of time, money and effort.

This was the procedure marked out by the supreme court when the Public Service Company Law was passed in 1913. See, also, New Brighton v. New Brighton Water Co. (1915) 247 Pa 232, 93 Atl 327.

Following the effective date of that act, the supreme court decided several cases which throw considerable light on the question here involved.

In Bellevue v. Ohio Valley Water Co. (1914) 245 Pa 114, 91 Atl 236, it held that the proviso to clause 7 of § 34 of the Act of 1874, 15 PS § 1353, *supra,* which granted power and jurisdiction to the court of common pleas of the proper county to hear, inquire and determine whether the charges of the company for gas and water were just and reasonable was repealed by the Public Service Company Law which conferred that power upon the Public Service Commission.

In New Brighton v. New Brighton Water Co. *supra,* it held that proceedings for the acquisition of waterworks by a municipality *since* the Public Service Company Law of July 26, 1913, P.L. 1374, 66 PS § 1 et seq., will be invalid unless they have been previously sanctioned by the Public Service Commission, thereby making the securing of such approval, in the shape of a certificate of public convenience, the *first step* in the procedure to be followed.

And in Reynoldsville v. Reynoldsville Water Co. (1915) 247 Pa 26, 92 Atl 1082, it held that where proceedings by a borough looking to the acquisition of a water company under clause 7 of § 34 of the Act of 1874, 15 PS § 1353, *supra,* had been begun and were pending at the effective date of the Public Service Company Law (January 1, 1914), the provisions of that law requiring the approval of the Public Service Commission to such acquisition were not merely procedural but operated directly on the rights of the municipality, by qualifying its right to acquire at its own pleasure the property of a water company within its limits, and therefore it could only be allowed retroactive effect as such a result was expressly declared in the act itself; and consequently, as such retroactive effect had not been expressly declared in the Public Service Company Law, the Commission's approval was not necessary. This was in line with the decision in the New Brighton case, *supra,* holding that as to proceedings begun *after* the effective date of the Public Service Company Law the Commission's approval was the first step in the proceeding, thus, in effect, putting it in the place of the preliminary

mandamus referred to in the Williamsport Case, *supra;* but where that preliminary proceeding had been begun before the Public Service Company Law became effective, it would be carried through without any application to or approval by the Commission, thus showing clearly the *preliminary* character of the Commission's approval of the application.

This was followed by our own case of Waynesboro Water Co. v. Public Service Commission (1922) 78 Pa Super Ct 143, in which the principal question for decision was whether a borough, desiring to acquire the plant of a water company, incorporated in 1882 under the general incorporation Act of April 29, 1874, P.L. 73, 15 PS § 1 et seq., must first apply to the Public Service Commission for a certificate of public convenience, pursuant to Art. III, § 3(d), of the Public Service Company Law, 66 PS § 182, or before applying to the Commission, must use the procedure by mandamus which was available to ascertain the probable price payable for such waterworks prior to the effective date of the Public Service Company Law; and we decided squarely, in line with the foreshadowings contained in the supreme court cases already cited, (1) that the borough must *first* apply to the Commission and obtain a certificate of public convenience evidencing its approval, before it can acquire the plant of a water company operating within its limits, and (2) that such action takes the place of the former procedure by preliminary mandamus which was available to ascertain the probable price payable by the borough for the waterworks, which it sought to acquire. The opinion of Judge Linn—now Mr. Justice Linn of the supreme court—speaking for this court, makes it clear that where the proceeding is by a municipality, seeking the acquisition of the works and plant of a water company, which is reluctant to sell and convey its works and plant to the municipality, the securing of the Public Service Commission's approval, in the form of its certificate of public convenience, is the very first step in the procedure, and any action looking to the acquisition of the water plant by mandamus proceeding before securing such approval was irregular and improper, and contrary to the procedure prescribed by the supreme court.

[2] Our next inquiry is directed to the changes in the law made by the enactment of the Public Utility Law of May 28, 1937, P.L. 1053, 66 PS 1101 et seq. (effective June 1, 1937), and whether those changes affect the order of procedure laid down by the supreme court and this court with respect to the proceedings necessary under the Public Service Company Law.

The Public Utility Law repealed the Public Service Company Law (§ 1502, 66 PS § 1562), but provided in § 1404, 66 PS § 1534, inter alia, as follows: "Effect on existing proceedings, certificates, regulations, tariffs, and contracts. All litigation, hearings, investigations, and other proceedings whatsoever, pending under any act repealed by this act, shall continue and remain in full force and effect, and may be continued and completed under the provisions of this act."

The provisions of Art. III, § 3(c) and (d) of the Public Service Company Law, 66 PS § 182, before quoted, were supplied by Art. II, § 202(e)

and (g) of the Public Utility Law, 66 PS § 1122, as follows (the important changes being italicized): "Section 202. Enumeration of Acts Requiring Certificate.—Upon approval of the Commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, and not otherwise, it shall be lawful: . . . (e) For any public utility . . . to *acquire from,* or transfer to, any person or corporation, *including a municipal corporation, by any method or device whatsoever* (including among other things a consolidation, merger, sale, or lease) the title to, or the possession or use of, any tangible or intangible property whatsoever. . . . (g) For any municipal corporation to acquire, construct, or begin to operate, any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service *beyond its corporate limits.*"

It will be noted that by the provisions of § 202(e), 66 PS § 1122, the approval by the Commission of the transfer of the property of a public service company—which by Art. III, § 3(c) of the Public Service Company Law, 66 PS § 182, had been limited to "any other corporation or person," and did not apply to any transfer whatever to a *municipal* corporation—was *extended* so as to include *any transfer of property, by any method or device, to a municipal* corporation, and this is broad enough to include any legal form or method of acquisition of such property by a municipal corporation from a public utility; and on the other hand § 202(g) was *limited* or confined to the right of a municipal corporation to acquire, etc., any plant, equipment, etc., for the rendering or furnishing to the public of any public utility service *beyond its corporate limits,* which had not theretofore been specially provided for.

The necessity of the Commission's approval of the right of a municipal corporation to acquire the works, plant, and property of a water company under clause 7 of § 34 of the Act of 1874, 15 PS § 1353, was, therefore, not abrogated, but was shifted to § 202(e), 66 PS § 1122, which covers the transfer, by any method, of the property of a public utility to a municipal corporation, and thus embraces the *acquisition* by a municipal corporation of the property of a public utility, whether the method of transfer be by *agreement* of purchase and sale or by proceedings instituted to compel its transfer to the municipal corporation under the Act of 1874, aforesaid. That the clause embraces several *methods of transfer* does not require a construction that the same procedure shall necessarily apply to all kinds alike. There is no reason why the procedure fixed by the supreme court for the acquisition by a municipal corporation of the works and property of a water company or gas company under clause 7 of § 34 of the Act of 1874, 15 PS § 1353, should not still apply where a municipal corporation is seeking to acquire the works and plant of such a company which is reluctant to sell its property to the municipal corporation.

But, in any event, where proceedings under the Act of 1874, clause 7 of § 34, 15 PS § 1353, were begun by a borough while the Public Service Company Law was in force, by the express provisions of the Public Utility

Law, *supra,* § 1404, 66 PS § 1534, the proceeding so begun and pending when the Public Utility Law of 1937 went into effect on June 1, 1937, "shall continue and remain in full force and effect, and may be continued and completed" under the provisions of the Act of 1937—and that can only mean that the order of procedure laid down by the supreme court as applicable for such a proceeding shall be observed and carried out to completion by the Public Utility Commission just as if the Public Service Company Law under which it was begun was still in force and effect. The ruling in the Reynoldsville Case, *supra,* applies with even greater force here, in view of the saving and continuing provision of § 1404.

All the reasons so convincingly stated by the supreme court, speaking through Mr. Justice, afterwards Chief Justice, Moschzisker, in the Williamsport and New Brighton Cases, *supra,* and by Judge Linn in the Waynesboro case, *supra,* for the securing of a certificate of public convenience from the Commission, evidencing its approval of the acquisition by a borough or other municipal corporation of the works and plant of a water company furnishing service within its limits, as the very first step in the proceedings, apply just as forcibly and effectually whether the jurisdiction given the Commission rests in a clause applicable to all transfers of property by a public utility corporation to a municipal corporation, either voluntary or involuntary, or in a separate clause applicable only to a proceeding instituted by a municipal corporation to acquire the plant and property of a public utility corporation.

We are, therefore, of the opinion that the application of the appellant borough to the Public Service Commission for a certificate of public convenience, evidencing its approval of the acquisition by the borough of the waterworks and water plant of Pottstown Gas and Water Company, having been filed on June 9, 1936, while the Public Service Company Law was in force and effect, it was the duty of the Public Utility Commission to proceed with the pending application just as if the Public Service Company Law still remained in force and effect and to follow the procedure laid down by the supreme court and this court respecting applications by a municipal corporation to acquire the works and property of a water company or gas company under clause 7 of § 34 of the Act of 1874, 15 PS § 1353, in the cases of Williamsport v. Citizens' Water & Gas Co. (1911) 232 Pa 232, 81 Atl 316; New Brighton v. New Brighton Water Co. (1915) 247 Pa 232, 93 Atl 327, and Waynesboro Water Co. v. Public Service Commission (1922) 78 Pa Super Ct 143.

The appeal is sustained. The order of the Commission appealed from is reversed; and the record is remitted to the Commission for further proceedings not inconsistent with this opinion. The costs on appeal to be paid by the Commission.

Re Morgan Stanley & Company, Incorporated

[File No. 65-9, Release No. 2748.]

Security issues, § 116.1 — Underwriting fees — Payment to affiliate — Competitive bids.

An underwriter affiliated with a registered holding company is not entitled to an exception from Rule U-12F-2, restricting payment of fees to affiliated underwriters, in connection with an issuance of debentures where the record shows that the issuing company has made no effort to obtain competitive bids and that several underwriters have indicated willingness and ability to head the proposed issue.

[May 12, 1941.]

APPLICATION *for ruling as to whether or not the proposed participation by an affiliated financial house in the underwriting of a proposed issue of debentures of a registered holding company should be excepted from Rule U-12F-2, pursuant to Par. (b) (2) thereof, of the General Rules and Regulations promulgated under the Holding Company Act; applicant held not entitled to exception.*

By the COMMISSION: The question now before us was raised by a letter dated April 4, 1941, from Morgan Stanley & Co. Incoporated, requesing a ruling by this Commission as to whether or not the proposed participation by Morgan Stanley, in the underwriting of a proposed issue and sale of $120,000,000 principal amount of debentures of Columbia Gas and Electric Corporation,[1] should be excepted from Rule U-12F-2, pursuant to paragraph (b) (2) thereof, of the general rules and regulations promulgated under the Public Utility Holding Company Act of 1935.[2]

The applicable portions of Rule U-12F-2 provide that no underwriter's fee (as defined in paragraph (d) of the rule) shall be paid in connection

[1] A declaration covering these debentures was filed by Columbia on March 13, 1941. Hearings thereon have begun and are still pending.

[2] Rule U-12F-2, the so-called "affiliate" rule, is applicable to the pending declaration since our competitive bidding rule (Rule U-50) was made expressly inapplicable to declarations filed prior to May 7, 1941. By our order dated April 16, 1941, Morgan Stanley was declared to be an affiliate of the Dayton Power and Light Company, a subsidiary of Columbia. In Re Dayton Power & Light Co. (1941) Holding Company Act Release No. 2693, 38 PUR(NS) 129. Our findings and opinion on which such order was based contain a clear indication that Morgan Stanley is likewise an affiliate of Columbia. In Re Dayton Power & Light Co. (1941) Holding Company Act Release No. 2654, 38 PUR (NS) 129.

with the issue and sale of securities to any affiliate of the declarant or to any person who the Commission finds stands in such relation to the declarant that there is liable to be or to have been an absence of arms-length bargaining with respect to such transaction, unless, as provided in paragraph (b), of such rule, "it appears to the Commission that—

"(1) Appropriate and diligent effort was made to obtain competitive bids for the securities which are the subject of the application or declaration, by publication or otherwise, and the affiliate's bid was not less favorable than that of any other bidders'; or

"(2) Such effort was not practicable and (a) the fee to be paid does not exceed customary fees for similar services where the parties are dealing at arm's length, (b) the service rendered is necessary, and (c) the remuneration is reasonable in view of the cost of rendering the service, the time spent therein, and other relevant factors."

Morgan Stanley has requested a ruling solely on the question of whether efforts to obtain competitive bids are not practicable within the meaning of Par (b)(2) of the rule.[3] Its argument that such efforts are not practicable is based upon opinions of its officers and the president of Columbia to the effect that the proposed Columbia debenture issue is, under existing conditions, so large as to require a large portion of the underwriters of the country to handle it, and that Morgan Stanley is best qualified to proceed with the underwriting since it is already familiar with Columbia's financial matters.

A hearing on this matter was held on April 17, 1941. Briefs and oral argument were waived by both Morgan Stanley and Columbia, the latter maintaining that it is not a party to this proceeding.

On the basis of the facts disclosed in the record of this proceeding we conclude that Morgan Stanley is not entitled to an exception from the rules, in view of the following:

(1) The record shows that Columbia made no efforts whatever to obtain competitive bids. It appears that Columbia never approached any underwriter other than Morgan Stanley in connection with heading the proposed debenture issue. On the contrary, the record shows that several other underwriters, including Smith, Barney & Co., Harriman Ripley & Co. Incorporated, and Mellon Securities Corporation, have indicated to Columbia their willingness and ability to head the underwriting of the proposed issue. Representatives of Columbia and Morgan Stanley testified that several underwriters other than Morgan Stanley were qualified to head the issue. Yet, Columbia officers apparently exhibited no interest in obtaining the propositions of these other underwriters and have had only Morgan Stanley in mind as principal underwriter. Under these circumstances, the failure of Columbia to investigate the proposition of these other underwriters has shut off the very type of evidence that would enable us to de-

[3] Of course an exception from the rule cannot be granted under Par. (b) (2) unless other conditions described therein are satisfied. At Morgan Stanley's request we shall at this time defer consideration of these other conditions and render an opinion only on the question presented by Morgan Stanley so that its status may be clarified.

termine whether or not efforts to obtain competitive bids were practicable.[4]

(2) The recent public announcement of the Federal Loan Administrator that the Reconstruction Finance Corporation would coöperate with private bankers in large security issues, indicates further that efforts to obtain competitive bids for the proposed Columbia issue are not impracticable.

(3) The other arguments made by Morgan Stanley are substantially the same as those presented to this Commission in connection with its consideration of its competitive bidding rule. We have already had occasion to announce our views regarding these arguments in the public statement accompanying the promulgation of our competitive bidding rule, and we do not believe that they require repetition now. It is noteworthy, however, that the principal arguments advanced in this case go to the wisdom of competitive bidding. Paragraph (b)(2) of the rule, on the other hand, does not deal with the wisdom of competitive bidding, but provides for an exception therefrom where efforts to obtain competitive bids are not practicable and other specified conditions are satisfied. Thus, it is the practicability of seeking competitive bids, and not the wisdom of competitive bidding, which is involved here.

Without more tangible effort on the part of Columbia to determine whether or not competitive bidding was practicable, and particularly in view of the indicated willingness and ability of several underwriters to head the proposed issue, we cannot find that appropriate and diligent effort to obtain competitive bid was not practicable in this instance.

[4] This same failure of Columbia has shut off valuable evidence regarding prices and terms determined by arms-length bargaining which would enable us to form a sound judgment as to whether the other conditions specified in Par. (b) (2) have been satisfied.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Sidney Cardonick

[Application Docket No. 33320.]

Certificates of convenience and necessity, § 169 — Validity of orders — Death of applicant.

A Commission order granting a certificate to an applicant subsequent to his death but on the same day that he died, is valid, and the legal representatives of the decedent may operate under the certificate for one year from the date of his death.

[May 6, 1941.]

PETITION *for reconsideration of order granting certificate subsequent to applicant's death but on the same day that he died; rehearing denied.*

By the COMMISSION. This matter comes before us upon petition of Horlacher Delivery Service, Inc., filed June 26, 1939, for reconsideration of our order dated June 6, 1939, in the above-entitled proceeding. Subsequently a supplemental petition was filed by Horlacher Delivery Service. Answers to both petitions were duly filed on behalf of the applicant.

On November 22, 1938, an application was filed by Sidney Cardonick for an amendment to his certificate of public convenience. A hearing on the application having been held, the Commission subsequently on June 6, 1939, issued a certificate of public convenience to the applicant. It appears that at or about 8 A. M. Eastern Daylight Saving Time, on June 6, 1939, the applicant died, which fact was unknown to the Commission when it issued its order of that date. The petition for reconsideration and its supplement contend our order of June 6, 1939, is a nullity, because it is tantamount to the granting of a personal license to an individual after his death. The Commission has carefully considered the allegations set forth in the petition for reconsideration and its supplement, together with the answers filed thereto and all the other facts in the case.

The law does not take notice of fractions of the same day. In Neff v. Barr (1826) 14 Serg. & R. 166, the supreme court of Pennsylvania in deciding a question of whether or not one judgment had priority over another filed the same day, established the rule that there are no fractions of a day, and that all judgments filed the same day are in contemplation of law filed at the same instant. The same principle of law has been followed in Re Hendrickson (1855) 24 Pa 363; Re McAfoose (1858) 32 Pa 276; Ladley v. Creighton (1872) 70 Pa 490, and Re Murray (1918) 262 Pa 188, 105 Atl 61.

We find, therefore, that our order of June 6, 1939, granting a certificate of public convenience to Sidney Cardonick is valid and not a nullity, since the action of the Commission occurred on the same day that the applicant died. Under the provisions of Rule 4 (b) of General Order No. 29 Revised, the legal representatives of the deceased applicant may continue to operate under the certificate of public convenience issued to the applicant for one year from the date of his death.

WISCONSIN PUBLIC SERVICE CORPORATION

Re Northern States Power Company

[2-U-1633.]

Service, § 153 — Duty to serve — Resale to municipal plant — Right to require contract.

A power company which has been ordered to serve a municipal plant un-

der a specified rate schedule is not obliged to serve at such rates unless the municipality enters into a contract as provided by that schedule.

[May 15, 1941.]

REHEARING *upon order directing power company to serve a municipal plant at rates in company's schedule; order affirmed. For earlier order, see 35 PUR(NS) 237.*

By the COMMISSION: By order of September 3, 1940, 35 PUR(NS) 237, we directed Northern States Power Company to furnish the village of Whitehall, Trempealeau county, as a public electric utility, with its requirements of electric energy at the rates prescribed in the company's filed schedule W–1. On application of Northern States Power Company, rehearing for purposes of oral argument and submittal of briefs was granted by order of October 1st.

Rehearing scheduled for October 14th was postponed from time to time to permit negotiations between the company and village. When no settlement resulted from negotiations, the adjourned rehearing was set by notice of April 2nd.

APPEARANCES: Northern States Power Company by John M. Campbell, Attorney, Eau Claire; Village of Whitehall by Burr Tarrant, Village Attorney, Whitehall; of the Commission staff; Philip H. Porter, Chief Counsel.

Since a verbatim record of the oral argument was made, no briefs were filed.

The parties stipulated that on February 27th the company had advised the village that a 10-year contract with a 5-year cancellation privilege would be tendered; that such contract was forwarded to the village on March 18; and that the village to date has refused to sign the contract.

The company contended at the rehearing that such contract is an integral part of the W–1 rate schedule. It stated its willingness to furnish service to the village under the terms and conditions set out in schedule W–1, but asserted that, except as provided in that rate schedule, it is not under any obligation to furnish service to the village.

The village asked for interpretation of the Commission's order as to whether it is necessary for the village to sign a contract in order to secure service at the rates specified in schedule W–1. The village cited finding No. 3 of the Commission's order, "That reasonable rates for such service are those in the company's schedule W–1 on file with this Commission."

Schedule W–1 resulted from our order of May 27, 1937, 16 Wis PSCR 1, 19 PUR(NS) 153, as modified by order of August 27, 1937. In the latter order we made the following finding (17 Wis PSCR 88, 99, Docket 2–U–657, 20 PUR(NS) 293, 302, Investigation, on Motion of the Commission, of the Rates, Rules,

Practices, and Activities of the Northern States Power Company and Midland Public Service Company):

"1. The term of a contract for resale service is a vital and essential part of the rate and should be prescribed as a condition of its availability."

The availability clause in Schedule W–1 reads:

"*Availability.* This schedule shall be available at primary distribution voltages for resale service to public utility customers (exclusive of interchange customers) upon signing a contract for service for ten years, subject to the reservations heretofore made by the company and the Commission as to the obligation of service in Docket 2–U–657."

The customers served under schedule W–1 have entered into contracts with the company. For the village of Whitehall to receive service under such schedule without entering into a similar contract would result in discrimination.

We interpret our order of September 3, 1940, *supra,* to mean—consistent with the finding above quoted from our order of August 27, 1937, *supra*—that the village of Whitehall is entitled to the rates set out in schedule W–1 of Northern States Power Company only if the village enters into a contract as provided by that schedule.

WASHINGTON DEPARTMENT OF PUBLIC SERVICE

Re Ed Sullivan

[Application D–1434.]

Re Anacortes-Mt. Vernon Stage Company

[Application D–1437.]

Re L. A. Shelton

[Application D–1439.]

[Order M. V. No. 35406, Hearing No. 2498.]

Monopoly and competition, § 61 — Motor carriers — Rights of existing carrier — Opportunity to provide service.

The Department may not authorize a motor carrier passenger and express service in territory being served by an existing carrier until the latter has been requested to provide all additional service required and has refused to do so.

[May 13, 1941.]

RE SULLIVAN

APPLICATIONS *for certificates to furnish motor carrier passenger and express service between fixed terminals; order in accordance with opinion.*

By the DEPARTMENT: This matter came on regularly for hearing at Coupeville, Washington, on the 23rd day of April, 1941, pursuant to notice duly given, before Ralph J. Benjamin, Supervisor of Transportation, and Joseph Starin, Examiner. Walter R. Groshong, Reporter.

The parties were represented as follows: Washington Department of Public Service, by Clifford O. Moe, Assistant Attorney General, Olympia; Ed Sullivan, by James Zylstra, Attorney, Coupeville; Anacortes-Mt. Vernon Stage Company, by R. V. Welts, Attorney, Mt. Vernon; L. A. Shelton by O. D. Anderson, Attorney, Everett.

Witnesses were sworn and examined, documentary evidence was introduced and the Department being fully advised in the premises makes and enters the following:

Findings of Fact, Opinion and Order
History of the Case

This case arose on the applications of two existing auto transportation companies holding certificates of public convenience and necessity from the Department and one person, not now a certificate holder, to render service on Whidby island and from Whidby island points to Mount Vernon and Anacortes. Ed Sullivan of Coupeville, Washington, made application for certificate to furnish passenger and express service between Mount Vernon and Fort Casey and Keystone on Whidby island.

The Anacortes-Mt. Vernon State Company's certificate presently authorizes passenger and express service between Mount Vernon and Anacortes via Whitney and La Conner and other routes which are not material to this case. This company made application for an extension under its certificate to include passenger and express service under Certificate No. 1 between Keystone and Fort Casey and Whidby Island Junction.

L. A. Shelton, doing business as Mukilteo Whidby Island Stages, under her certificate is authorized to render passenger and express service between Oak Harbor and Seattle via Mukilteo, Mukilteo, and Everett and Oak Harbor and Columbia Beach via Coupeville and Langley. She applied for an extension of passenger and express service under Certificate No. 216 from Oak Harbor to Anacortes and Mount Vernon.

The application of Anacortes-Mt. Vernon Stage Company was protested by L. A. Shelton. The application of Ed Sullivan was protested by L. A. Shelton and also by the Anacortes-Mt. Vernon Stage Company.

Mrs. Shelton operates on Whidby island over Secondary State Highway 1–D between Columbia Beach and Oak Harbor via Coupeville and Langley. The Anacortes-Mt. Vernon Stage Company operates in a general east and west direction between Anacortes and Mount Vernon over State Highway No. 1. The two roads have a junction at what is called Whidby

Island Junction. The service applied for by Ed Sullivan between Keystone and Fort Casey on the one hand and Oak Harbor on the other hand would be over the identical route and covering the same territory now served by Mrs. Shelton, and between Whidby Island Junction and Mount Vernon would be over the identical route and covering the same territory now served by Anacortes-Mt. Vernon Stage Company. Between Oak Harbor and Whidby Island Junction, there is at present no service.

The applied-for service of Anacortes-Mt. Vernon Stage Company would cover the same route and the same territory between Oak Harbor and Keystone and Fort Casey on Secondary State Highway No. 1–A, that is served by Mrs. Shelton.

Mrs. Shelton's application would cover the same route and territory between Whidby Island Junction and Anacortes and Mount Vernon on State Road No. 1 that is served by Anacortes-Mt. Vernon Stage Company.

Findings of Fact

At the outset Ed Sullivan stated that he was willing that restriction be placed in a certificate, if it were granted to him, prohibiting local service from Whidby Island Junction to Mount Vernon; i. e., he would want the right to pick up passengers north of Whidby Island Junction, providing they were destined to some point along his route south of there, and to deliver passengers who originated in territories south of Whidby Island Junction to points north of said junction. He does not wish the certificate issued to him if he is not permitted to go through to Anacortes. He does not wish to be compelled to transfer his passengers at Whidby Island Junction to the Anacortes-Mt. Vernon stage. It is 40 miles between Keystone and Mount Vernon and 16 miles between Keystone and Oak Harbor. There are about 450 soldiers at Fort Casey. He wishes to provide service for these men to Whidby island points and to Mount Vernon. He has purchased two 28-passenger 1941 Ford busses of the value of $3,300 each. He has not previously been in the auto transportation business. Sullivan contended that his service would not conflict with that of Mrs. Shelton because he would have different schedules.

The testimony of other witnesses shows that a number of young people on the island attend normal school at Bellingham and require transportation service between island points and Mount Vernon where they may connect with the Bellingham bus. Farmers buy machinery and equipment in Mount Vernon. It would be a benefit to the farmers if there were a stage line established to Mount Vernon. There is no through service available at present. It is 15 miles between Oak Harbor and Whidby Island Junction. There is no bus service between Oak Harbor and Whidby Island Junction at present so that there is no service available from island points northward to Mount Vernon. The population of Oak Harbor is about 600; Coupeville, 500; and Langley, 500. These are the principal points on the island.

All parties agreed, and the record shows, that a bus service is required between island points and Mount

Vernon. Island people would be able to shop in Mount Vernon if they had direct service. The ferry service to be established between Port Townsend and Keystone, together with a bus service to Mount Vernon, would provide a direct route for people who desire to go from Mount Vernon and points on the mainland to the Olympic peninsula. This would result in drawing passengers from all over the Olympic peninsula. One-third of the population of Whidby island lives in the south end of the island. They need service north to Anacortes and Mount Vernon. Also, people living in the north end of the island require service south to Everett and Seattle.

The men at Fort Casey at present constitute a fairly large potential trade for the busses. However, when this war emergency is over and if the forts take on their normal peace-time size, a purely local independent island service without outlets to Mount Vernon on the north and Everett and Seattle on the south could not pay. Local service has been tried before and failed.

The record shows that the convenience and necessity of the people on Whidby island requires the institution of a passenger bus service between island points and Mount Vernon. The question, however, appears to be whether the Sullivan application should be granted giving a through service without transfer to Mount Vernon or whether the two existing carriers should be allowed to give the necessary service by closing the gap between Oak Harbor and Whidby Island Junction. Sullivan and witnesses in his behalf opposed a connecting service on the grounds that people would have to get off one stage and wait in all kinds of weather for the connecting Anacortes-Mt. Vernon stage. Also that there would be greater possibility of loss of express shipments if express had to be transferred from one stage to the other. Opposing this testimony, however, is the fact that at Whidby Island Junction there is a fairly large store and service station and that the proprietor of the store is agreeable, and even anxious, that connecting passengers use facilities of his waiting room and accommodations. Passengers waiting for busses would be prospective patrons of his store. There would be no necessity for people to stand in the weather waiting for a connecting bus.

The Anacortes-Mt. Vernon Stage Company gets about 1,000 passengers a year at Whidby Island Junction who come to that point by private automobile from Whidby island. If Sullivan's application were granted, this would mean a considerable loss to this company. It handles the express shipments from Mount Vernon and forwards said express with the mail carrier to Whidby island points. This company connects at Mount Vernon with the North Coast Transportation Company for Bellingham. Six trips a day are made between Anacortes and Mount Vernon. The company will institute added trips or change time schedules so that it will connect with either the service of Mrs. Shelton or Sullivan, depending upon which application is granted. The company is willing to drop its own application for service to points south of Whidby Island Junction if a plan is worked out to connect with its service at the junction. The evidence shows that many

people now ride daily on the busses of this company and get on and off at Dean's Service Station at Whidby Island Junction. This is not a large company but its equipment and service is very satisfactory. It suffered an operating loss in the sum of $200 in 1940.

Mrs. Shelton is now serving all points on the island except that portion between Oak Harbor and Whidby Island Junction. She has two busses in this service and expects to buy more. She will, if her application is granted, institute connecting service with the Anacortes-Mt. Vernon Stage Company. She will also put on additional local trips between Fort Casey, Coupeville, and Oak Harbor. She is willing to withdraw her application for service beyond Whidby Island Junction, between Anacortes and Mount Vernon, provided she is permitted to make connections with the Anacortes-Mt. Vernon Stage Company.

Opinion

It is our opinion that the application of Ed Sullivan must be denied. His application between Fort Casey, Keystone, and Oak Harbor covers territory already served by Mrs. Shelton. Under the law, we are not permitted to grant an additional certificate in territory already served by an existing certificate holder. Rem. Rev. Stat. § 6390, so far as applicable to this case, is as follows:

". . . The Commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this act, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the Commission, ..."

The fact that Sullivan would operate his trips at different times than those of Mrs. Shelton cannot affect our decision since it is well settled by court decision that an existing certificate holder has a right to render all the additional service required and must first be requested by the Department to render said additional service, and refuse to render said service, before the Department may grant an additional certificate to a new applicant.

This precludes the Department, therefore, from granting Mr. Sullivan a certificate between the most important centers on the island. What territory then is open that could be considered as territory not already served? The only possible territory is that between Oak Harbor and Whidby Island Junction. Aside from the fact that this stretch is comparatively sparsely settled, the record shows that the Anacortes-Mt. Vernon Stage Company draws a considerable portion of its passengers and revenue from this section. The distance between the two points is only 14 or 15 miles. The north end of this section is served by Anacortes-Mt. Vernon Stage Line and the south end of the section is adjacent to Oak Harbor served by Mrs. Shelton. Territory between Whidby Island Junction and Mount Vernon is, of course, already served by Anacortes-Mt. Vernon Stage Line.

If the Department were to grant Mr. Sullivan's application purely as a through service between Keystone,

Fort Casey, and Mount Vernon, with no intermediate service permitted, he would find it financially impossible to stay in business. We, therefore, must deny Mr. Sullivan's application.

It is our opinion that Mrs. Shelton's application should be granted, by permitting her to close the gap between Oak Harbor and Whidby Island Junction and by instituting schedules which will connect at Whidby Island Junction with the service of the Anacortes-Mt. Vernon Stage Company. An auto transportation company has a right to an extension of its service into territory immediately adjacent to that which it already serves. Both Mrs. Shelton and the Anacortes-Mt. Vernon Stage Company have agreed in the record to coöperate in instituting connecting service with the connecting point at Whidby Island Junction. It is our opinion, therefore, that the application of Anacortes-Mt. Vernon Stage Company should be denied and the application of Mrs. Shelton granted between Oak Harbor and Whidby Island Junction but that service from Oak Harbor to Anacortes and Mount Vernon should be denied. It is our opinion, and we find, that public convenience and necessity of the people along the routes and in the territory served by Mrs. Shelton on Whidby island requires that she institute a passenger bus service between said points and Mount Vernon by extension of her service from Oak Harbor to Whidby Island Junction to connect with the service of the Anacortes-Mt. Vernon Stage Line.

FEDERAL COMMUNICATIONS COMMISSION

Re Southwestern Bell Telephone Company

[P-12, Docket No. 5672.]

Rates, § 3 — Jurisdiction of Federal Communications Commission — Interzone message rates — Calls between states.

1. Telephone service furnished under a schedule of "interzone message rates," applicable to calls between suburban zones in adjoining states over the lines of a company operating an exchange in contiguous cities in such states and including such suburban zones in an extended exchange area (zones service permitting calling at flat rates to customers in the originating zone only, with interzone message rates applying on all calls to other zones) is not exempt from the jurisdiction of the Federal Communications Commission as "telephone exchange service" exempted under § 221(b) of the Communications Act; it is not "intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge," p. 179.

FEDERAL COMMUNICATIONS COMMISSION

Rates, § 238 — Schedules — Necessity of filing with Federal Commission — Interzone message rates.

2. Rates of a telephone company covering interstate toll messages between zones in its district exchange area, designated as "interzone message service" and applicable to calls between suburban zones in adjoining states, but not constituting measured exchange service, should be included in tariffs on file with the Federal Communications Commission in accordance with requirements of § 203 of the Communications Act, 47 USCA § 203, p. 179.

(CASE and CRAVEN, Commissioners, dissent.)

[May 28, 1941.]

INVESTIGATION *of enlargement of telephone exchange area, involving cancellation of "message toll rates" and filing of "interzone message rates" for interstate service between zones outside of exchange zone; filing of tariffs ordered.*

APPEARANCES: On behalf of the respondent, Southwestern Bell Telephone Company, E. W. Clausen, St. Louis, Missouri; on behalf of the Missouri Public Service Commission, James H. Linton; on behalf of the State Corporation Commission of Kansas, Harold Medill; on behalf of National Association of Railroad and Utilities Commissioners, John E. Benton; on behalf of the Federal Communications Commission, James A. Kennedy, and Frank B. Warren.

By the COMMISSION: This proceeding arises upon motion of the Commission for an investigation concerning the failure of the Southwestern Bell Telephone Company to file with this Commission certain telephone message rates applicable to interstate traffic in the Kansas City area. Prior to July 1, 1938, the Southwestern Bell Telephone Company, hereinafter referred to as the company, filed with this Commission certain tariffs canceling interstate message toll telephone rates applicable to calls between suburban communities contiguous to Kansas City, Missouri, and Kansas City, Kansas. The cancellation was effective July 1, 1938. On June 29, 1938, the Commission directed that an investigation be made with respect to the cancellation of the rates mentioned. Subsequently, the company was advised that, in the opinion of the Commission, the rates covering the interstate toll messages should be included in tariffs filed with this Commission. The company requested a hearing before this Commission. The request was granted, and the hearing was held October 9, 1939.

The State Corporation Commission of Kansas and the Public Service Commission of Missouri were requested to coöperate with this Commission in disposing of the question presented. They coöperated in preparing a stipulation, which was incorporated in the record. The only other evidence received at the hearing was the testimony of an operating official of the company covering certain practical operating characteristics of the traffic moving under the canceled rates.

The Southwestern Bell Telephone Company is a carrier, as defined in the Communications Act, doing business in the states of Kansas and Missouri, engaging in interstate communication service between Kansas and Missouri and particularly within the area described in respondent's tariffs on file with the Kansas and Missouri Commissions as the "Kansas City District Exchange Area."

A proposed report in this proceeding was issued on July 26, 1940. Exceptions to this report and brief in support of the exceptions were filed by the Southwestern Bell Telephone Company. Exceptions were also filed by the Kansas Corporation Commission. Counsel for the company and the general solicitor of the National Association of Railroad and Utilities Commissioners were heard on oral argument. All of the evidence in the record, the briefs, and oral arguments have been carefully considered in reaching the conclusions herein expressed.

[1, 2] Kansas City, Missouri, and Kansas City, Kansas, are contiguous municipalities and have long been included in the same telephone exchange area. The exchange rates for these cities have never been on file with any Federal regulatory authority, and the matter of filing rates for exchange service is not an issue in this proceeding. As the cities expanded and developed, certain suburban communities contiguous to them were first supplied with telephone exchange service on a limited basis whereby a subscriber in any one of those suburban communities had access to other subscribers in the same community under his exchange flat rate, and all calls to other suburban communities or to the cities named were handled as toll messages and charged for on a per-message basis. The rates for such interstate toll messages were formerly on file with this Commission and are the rates which were canceled effective July 1, 1938. Some of those communities have been absorbed into one or the other of the two cities named and are now included within the exchange areas of Kansas City proper. The suburban communities which are involved in this proceeding have been, until July 1, 1938, receiving limited service on the basis above described.

Effective July 1, 1938, the company, with the approval of the Kansas and Missouri Commissions, created an enlarged Kansas City District Exchange Area, which embraces Kansas City, Missouri, Kansas City, Kansas, and a number of surrounding contiguous communities located either in Missouri or Kansas. Tariffs filed with the Kansas and Missouri Commissions provide for alternative service throughout this district exchange area whereby a subscriber in any one of these suburban communities may obtain either:

(1) Zone service which permits calling at flat rates to customers in the originating zone only, with interzone message rates applying on all calls to other zones;

or

(2) District (extended area) service permitting residence customers to call at flat rates to all customers in the originating zone and the Kansas City zone and those business and residence customers taking district service in all other zones. For business customers, the district service includes un-

limited service to all customers in the originating zone and an allowance of 20 messages per month (additional calls at 4 cents each) to all customers in the Kansas City zone or to those customers taking district service in all other zones. For both business and residence customers, interzone message rates apply on all calls to customers taking zone service in other suburban zones.

In the Kansas City zone, only one type of customer service is offered, providing, at flat or message rates, service to all customers in the Kansas City zone and to those customers taking district (extended area) service in all other zones. Interzone message rates apply on all calls to exchange customers taking zone service in the suburban zones.

The matter of filing the rates described in item (2) above is not an issue in this proceeding. The issues cover only the filing of the interstate "interzone message rates" referred to in item (1) formerly filed with this Commission as "message toll rates." Those are the rates which the Commission requested the company to file and which the company contends that it is not required to file with this Commission.

It is apparent that the only real change effected on July 1, 1938, was to add the service described under item (2), since that described under item (1) had been available for many years. The availability of the item (2) service reduces the number of toll messages transmitted in connection with the item (1) service, but does not change the nature of that service. In transmitting interstate messages between zones in the district exchange area, the operating procedure was the same after July 1, 1938 as it was before. The method of billing and collecting for these item (1) messages is the same as before July 1, 1938. Prior to July 1, 1938 these interzone calls were classified as "message toll telephone service" in toll tariffs on file with this Commission. Subsequent to July 1, 1938, these same calls were included under the classification "interzone message service," and charges therefor are included only in tariffs on file with the Kansas and Missouri Commissions. It appears that this change of name and a decrease in the volume of the traffic are the only changes which occurred with relation to this service.

The broad grant of authority to this Commission is contained in §§ 1 and 2 of the Communications Act, 47 USCA §§ 151, 152, § 1 of which reads in part:

"For the purpose of regulating interstate and foreign commerce in communication by wire and radio . . . there is hereby created a Commission to be known as the 'Federal Communications Commission,' which shall be constituted as hereinafter provided and which shall execute and enforce the provisions of this act."

Section 2 states: "The provisions of this act shall apply to *all interstate and foreign communication by wire* or radio . . . ."

Section 221(b) of the Communications Act, 47 USCA § 221(b), reads as follows: "Nothing in this act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire

telephone exchange service, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a state Commission or by local governmental authority."

Telephone exchange service is defined in § 3 of the Communications Act, 47 USCA § 153(r), as follows: "'Telephone exchange service' means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge."

The Communications Act contains a broad all-inclusive grant of authority to this Commission over all interstate communication by wire or radio. Section 221(b) is an exception to, or limitation upon, this broad grant. Giving it its broadest possible meaning, consideration of the definition of "telephone exchange service" in § 3 of the act necessitates the conclusion that the service furnished under the interstate "interzone message rates" in the Kansas City extended exchange area is not within the exception contained in § 221(b). It is not "intercommunicating service of the character ordinarily furnished by a single exchange *and which is covered by the exchange service charge.*"

The contract entered into by a subscriber for telephone exchange service in the Kansas City area includes and involves all the provisions of the applicable tariffs of the carrier. This is a reasonable interpretation of the whole agreement, express and implied, between the subscriber and the company. The subscriber, however, contracts for a particular type of *exchange* service. He also agrees to pay the lawful rates for *toll* service not covered in his contract for *exchange* service. It would be just as logical to say that all toll rates in the United States are included in the subscriber's contract for exchange service as to say that a subscriber for limited or zone service in one of the Kansas City zones has included in his contract for *exchange* service the toll rates covering the interzone messages.

The distinction between extended area measured exchange service messages and the interzone messages referred to in this proceeding is very clear. Measured service is a common and recognized method of charging for exchange service and contemplates a flat minimum charge with a specified number of messages included therein. Messages in excess of the minimum number are charged for at a specified rate per message, but all the messages must be within the same area as that covered by the minimum charge for exchange service. The interzone messages referred to in this proceeding terminate outside the local zone exchange area covered by the flat zone exchange rate.

From the standpoint of the subscribers in the suburban communities who take local or zone service described under item (1) above, the zone exchange rate only covers service to other subscribers in the local zone in which they live, and the message rates are designed to cover service between the local or zone exchanges within the district exchange area.

The mere fact that the zone exchange area is within the geographical limits of a larger district exchange does not affect the nature of the service furnished under the interzone interstate messages rates. It is not "service . . . which is covered by the exchange service charge."

Service rendered in interstate commerce between the suburban communities contiguous to Kansas City under the interzone message rates which became effective July 1, 1938, is in all respects identical with that furnished prior to July 1, 1938, under the message toll rates then on file with this Commission. It should not be assumed that carriers subject to the Communications Act could, by merely changing the label on a particular class of service, bring such service within the exception in § 221(b), thus eliminating the necessity of filing rates under the provisions of § 203.

Conclusions

It is our conclusion that the present rates covering interstate telephone toll messages between zones in the Kansas City district exchange area, designated as "message toll rates" in tariffs formerly on file with this Commission, and now designated as "interzone message service" by the company in tariffs on file with the Kansas and Missouri Commissions, should be included in tariffs on file with this Commission, in accordance with the requirements of § 203. An appropriate order will be entered. [Order omitted.]

CASE and CRAVEN, Commissioners, dissenting: We believe that under any reasonable interpretation of § 221 (b) of the Communications Act, *supra*, rates for telephone service within the Kansas City exchange area, as enlarged on July 1, 1938, are not properly within the jurisdiction of this Commission.

Section 221(b) of the act specifically excludes this Commission from exercising any authority whatsoever with respect to "charges, classifications, practices, services, facilities, or regulations for or in connection with wire telephone exchange service." The language of the act is specific and plain. The phrase "in any case where such matters are subject to regulation by a state Commission or by local governmental authority—" in § 221(b) is seized upon to urge a strained construction of the paragraph as a whole, which would nullify its meaning. It is further assumed that, under the Constitution, no purely state authority could be given jurisdiction over interstate commerce in the nature of telephone exchange service. But the hearings on the Communications Act show clearly that the reference in § 221(b) is to the state regulatory Commissions as then constituted. The paragraph was suggested by the general solicitor for the National Association of Railroad and Utilities Commissioners. A witness for the Iowa Independent Telephone Association suggested that the quoted phrase be omitted since, in his opinion, the Federal Commission should not have jurisdiction even where there was no local regulatory authority. Iowa has no local or state authority for the regulation of telephone rates. No one questioned his understanding of the meaning of the quoted phrase.

It is not for this Commission to

question the action of Congress as being unwise or even unconstitutional. The intent of Congress is plain.

No distinction should be drawn between the flat rate charges for exchange service and the message rates between zones in the enlarged exchange area. The interzone message rates are within the meaning of "exchange service" under any commonly accepted construction of this phrase at the time of the passage of the Communications Act. Exchange service is furnished within an area including interconnected central offices where the community of interest indicates the desirability of flat rate service throughout such an area. It is shown in this record that the enlargement of the Kansas City area was sponsored by the state Commissions of Kansas and Missouri. The retention of message rates and limited or zone service within the enlarged area is merely an incident and a very minor one in the general provision of expanded flat rate service within the entire exchange area.

We are not here confronted with a situation where the company seeks to deprive this Commission of its jurisdiction over what is essentially toll service between communities or cities through an unwarranted and wholly fictitious expansion of the exchange area beyond the limits consonant with any recognized measure of community interest. The Census Bureau provides a test for measuring community of interest as a basis of ultimate expansion of exchange areas. If and when the operating telephone companies seek to go beyond the accepted limitation of community interest adaptable for flat rate exchange service, we are in position to take whatever action may be appropriate at that time. This is not such a case, nor are we warranted in assuming that we will ever be faced with such a case. The history of exchange area development to date does not give color to such a possibility but rather negatives it. Expansion of an exchange area has heretofore coincided with or lagged behind (never preceded) public demand and has always been well within the commonly accepted limits of metropolitan areas as defined by the Census Bureau.

There is a discernible and practical difference in the operations of any telephone company within an exchange area and those between communities which have not developed the community of interest which justifies their inclusion within the same exchange area. Community of interest between communities served by different central offices develops slowly and eventually reaches the point where it justifies the elimination of the toll board originally employed to handle messages between the communities, even though these messages continue to be charged for as toll traffic during the transitional period. Ultimately the combined effect of public demand and economy of operation results in the establishment of an enlarged exchange area and the elimination of toll traffic as to most subscribers, who will take the flat rate enlarged area exchange service. A few may prefer, at least for a time, to remain as limited subscribers; confined, under their exchange rate, to an area roughly corresponding to the original area served by the local central office. The relatively insignificant number of calls by this limited class of subscriber be-

tween zones in the enlarged area is purely incidental in a very minor way to the operation of the whole area as an exchange. The development of an exchange area is not an instantaneous proposition and it is fruitless to make much of the fact that there is no change in actual operations with respect to the limited number of interzone messages immediately before and after July 1, 1938. On July 1, 1938, the community of interest and volume of traffic had reached the point where it was treated in all respects, except billing, as exchange traffic is usually treated.

Telephone service within a single metropolitan area, regardless of state lines, has been recognized by the Congress as a local problem. It is in fact a local problem, both technically and socially. Congress has further recognized the desirability of leaving the matter of local exchange rates in the hands of state or local authorities. There is nothing in this record which indicates the desirability of an attempt on the part of this Commission to inject itself into these purely local problems. The state Commissions concerned are satisfied of their authority to fix the charges for subscribers in their respective states. The company does not contest their jurisdiction. Hence the jurisdiction of the states is unchallenged. This Commission has no grounds whatsoever upon which to seek to extend its authority beyond the plain intent of the Congress.

The investigation should be discontinued.

CALIFORNIA RAILROAD COMMISSION

Re California Water Service Company et al.

[Decision No. 34207, Application No. 24038.]

Municipal plants, § 21 —Acquisition of facilities — Competitive business — Operating loss.

1. An application, by a water company and by a city which operates a water utility, for the transfer of the company's plant to the municipality and for discontinuance of service by the company, should be granted when water operations in the city have reached the unfortunate stage where it is no longer possible for either system to operate at a profit, it appearing conclusively that the company cannot conduct its business in competition with the municipal waterworks except at a continuous and substantial out-of-pocket loss, p. 186.

Municipal plants, § 10 — Jurisdiction of Commission — Contract of sale — Approval of electorate.

2. An objection that the majority of the electorate of a municipality did not

approve a contract for the sale of public utility property to the municipality will not be entertained by the Commission in a proceeding on application by a water company and the municipality for authorization of the sale, since it would be foreign to the jurisdiction of the Commission to pass judgment upon the propriety of the official action taken by the duly constituted municipal authority, p. 186.

[May 20, 1941.]

APPLICATION *by water company and city for authority to transfer water property to the city and for authority of the company to discontinue service; granted.*

APPEARANCES: McCutchen, Olney, Mannon & Greene, by Robert M. Brown, for applicant; Glenn D. Newton, City Attorney, and Chenoweth and Leininger, by Orr M. Chenoweth, for city of Redding.

By the COMMISSION: California Water Service Company, a corporation, engaged in the business of selling water in the city of Redding, Shasta county, asks the Commission for authority to sell and transfer all of its water rights and certain of its transmission, distribution, and storage facilities to the city of Redding, which joins in the application, and, in amendment to the application, requests authority to discontinue entirely its public utility obligations in the city of Redding and contiguous territory within a period of sixty days after the date of the order.

A public hearing in this proceeding was held before Examiner Murray R. MacKall at Redding.

The California Water Service Company for many years has operated a public utility waterworks supplying the inhabitants of the city of Redding and certain adjoining territory with water for domestic, commercial, and industrial purposes. A few years ago, the city of Redding installed and is now operating its own municipal waterworks which, for all practical purposes, provides a completely parallel and competitive service with the utility. A contract has now been entered into wherein the company has agreed to sell and transfer certain of the utility properties to the city for a total purchase price of $45,000 with interest, and payable in nine equal annual instalments out of the net revenues to be derived by the city through the operation of the properties purchased. Upon the city assuming control and possession of said properties, the California Water Service Company is to withdraw from the field entirely. This agreement was authorized by Resolution No. 1189 duly passed and adopted by the city council of the city of Redding.

The evidence shows that the book value of the company's water properties in Redding was $313,265 as of December 31, 1940. Competitive conditions, arising from the operations of the municipal system, have resulted in a net operating loss claimed to be $16,400 for the year 1940 with no prospect of improvement in the future. The purchase contract provides

for the sale of certain facilities useful and necessary to the operation of the city's waterworks. The remainder of the utility plant and equipment will be salvaged and used elsewhere or otherwise disposed of.

The testimony indicates that all consumers now being supplied through the utility's system can be served by the municipal waterworks within a period not to exceed forty-five days, these forty-five days being the time required to cut over all service connections to the city's distribution mains.

[1, 2] Objection against the approval of this joint petition of the California Water Service Company and the city of Redding was made by Dr. Ernest Dozier, L. T. Alvard, and J. P. Staton, primarily upon the grounds that the action of the city council in entering into an agreement to purchase the properties involved herein did not have the approval of the majority of the electorate of the city of Redding and that authorization of the transfer of said properties would eliminate the existing competitive conditions resulting in the city immediately raising the rates for all water service to the alleged serious detriment of the public welfare. In this connection, it is well to consider the fact that water operations in the city of Redding have now reached the unfortunate stage where it is no longer possible for either system to operate at a profit. The evidence is conclusive that California Water Service Company cannot conduct its business in competition with the municipal waterworks except at a continuous and substantial out-of-pocket loss.

In the light of these circumstances, we are of the opinion that the application, as amended, should be granted. It would appear highly improper as wholly foreign to its regularly constituted authority and jurisdiction for this Commission to attempt to pass judgment upon the propriety of the official action taken by the duly constituted municipal authorities leading to the acquisition of any of the properties involved herein, which, in their opinion, appeared to be necessary and useful to their city.

SECURITIES AND EXCHANGE COMMISSION

Re Standard Power & Light Corporation

[File No. 70-208, Release No. 2827.]

Intercorporate relations, § 19.3 — Exchange of securities — Interest in subsidiary system — Integration proceedings.

A registered holding company involved in integration proceedings under § 11 of the Holding Company Act, 15 USCA § 79k, wherein disposal of its interest in a subsidiary system is part of a plan for winding up its affairs, should not be authorized to participate in a plan for distribution of stock holdings of an intermediate holding company by exchanging notes

and debentures of that company for stock holdings in the subsidiary system, as such a transaction would not meet the requirements of § 10(c) (1) and § 10(c) (2) of the Holding Company Act, 15 USCA § 79j.

[June 13, 1941.]

APPLICATION *by registered holding company for approval of an exchange of notes and debentures of a subsidiary for common stock in a system company; application denied.*

APPEARANCES: David K. Kadane, for the Public Utilities Division of the Commission; R. E. T. Riggs, of Seibert & Riggs, New York, New York, for Standard Power and Light Corporation; Abner Goldstone, of New York city for Standard Gas and Electric Company; William Yeager, for Abraham K. Weber, Attorney of Record for a holder of common stock, Nathaniel W. Nelson, New York, New York.

By the COMMISSION: Standard Power and Light Corporation is a registered holding company owning 1,160,000 shares or 53.64 per cent of the common stock of Standard Gas and Electric Company, also a registered holding company. Standard Gas as of December 31, 1940, owned 993,870 shares or 99 per cent of the common stock (constituting 76 per cent of the voting power) of San Diego Gas & Electric Company, a public utility company, serving San Diego, California, and its vicinage. Standard Gas also has subsidiaries which conduct utility operations in 22 states other than California, and it has embarked on a program whereby it seeks to adjust its affairs in accordance with § 11 (b) (1) of the Public Utility Holding Company Act of 1935, 15 USCA § 79K (b) (1), by disposing of all its interests except Philadelphia Company. (Re Philadelphia Co. [1941] Holding Company Act Release No. 2816.)

As a step in the consummation of this program, Standard Gas applied to this Commission pursuant to § 11 (e) of the act for our approval of a plant which as amended provided that holders of notes or debentures of Standard Gas would be entitled to exchange each $1,000 principal amount thereof for 58 shares of the Common Stock of San Diego Gas & Electric Company. We approved the amended plan, finding that it was "necessary to effectuate the provisions" of § 11 (b). Re Standard Gas & E. Co. (1940) Holding Company Act Release Nos. 2262, 2483, 7 SEC 1089, 36 PUR(NS) 51.

Standard Power and Light Corporation owned at December 31, 1940, $973,000 principal amount of notes and debentures of Standard Gas. This proceeding is on an application of Standard Power for our approval of an exchange by it of $150,000 principal amount of notes and debentures of Standard Gas for 8,700 shares of common stock of San Diego Gas & Electric Company pursuant to the Standard Gas exchange plan. Hearings were held after appropriate public notice.

Standard Power and Light Corporation has outstanding 34,054 shares

of $7 preferred stock on which dividends were in arrears on December 31, 1940, in the amount of $48.06 per share, aggregating $1,636,862.27. It also has outstanding common stock in two series. The portfolio of Standard Power consists of the following securities:

$973,000	Principal amount of Standard Gas and Electric Company notes and debentures.
40,751.3	Shares of Standard Gas $7 prior preference stock.
1,160,000	Shares of Standard Gas common stock.
1,980	Shares of Louisville Gas and Electric Company (Delaware) Class B common stock.
1,267.65	Shares of Mountain States Power Company common stock.
9,750	Shares of Philadelphia Company common stock.
23,570	Shares of Southern Colorado Power Company Class A common stock.

The four last-named companies are direct subsidiaries of Standard Gas and Electric Company, and the interests represented by the shares held by Standard Power are small in comparison with the direct interests of Standard Gas in those companies. No dividends have been paid on the preferred stock of Standard Power since 1933.

We have instituted proceedings against Standard Power under § 11 (b) (2) of the act, in which proceedings there is being considered the question whether it is necessary to discontinue the existence of Standard Power, and, if so, what steps are necessary to bring that about. Holding Company Act Release No. 2095 (1940). The record in those proceedings, which counsel has stipulated we may consider as part of the record herein, indicates that Standard Power and its large common stockholders acknowledge the desirability of winding up the affairs of the corporation.

Under these circumstances, we are asked to approve an exchange of Standard Gas notes and debentures owned by Standard Power, for shares of common stock of San Diego Gas & Electric Company. The application was filed under §§ 9 (a) (1) and 10 of the act, 15 USCA §§ 79i, 79j, which provides, among other things, that the Commission shall not approve an acquisition of securities by a registered holding company which is detrimental to the carrying out of the provisions of § 11 (§ 10 (c) (1)); and that such an acquisition shall not be approved unless the Commission finds that it will serve the public interest by tending towards the economical and efficient development of an integrated public utility system (§ 10 (c) (2)). We plainly cannot avoid a rejection of the application under § 10 (c) of the act. The carrying out of the provisions of § 11 requires completion of the process already instituted of a disposal by the Standard Power-Standard Gas system of its interest in San Diego Gas & Electric Company. The application before us, which if approved would permit the retention in the system of 8,700 shares of common stock of San Diego, would be detrimental to this objective. Moreover, we do not perceive any basis for finding that the acquisition would tend towards the development of an integrated public utility system.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Louis Rosendorn

v.

New England Telephone & Telegraph Company

[D.P.U. 6443.]

Telephones, § 5 — Jurisdiction of Commission — Directories — Classified section.

1. The language of the statute (General Laws [Ter. Ed.] Chap. 159, § 12) conferring powers on the Department of Public Utilities is broad enough to include regulatory jurisdiction over the telephone directory, including the classified section, p. 191.

Service, § 166 — Rules and regulations — Limitation of liability — Telephone — Directory service.

2. Provisions of a general regulation of a telephone company and a contract stipulation required of persons applying for directory service, limiting the liability of the company for errors or omissions, are fair and reasonable conditions or prerequisites to the furnishing of directory service in the telephone directory, where they limit the company's liability arising from errors or omissions in directory listings (other than charged listings) to the amount of actual impairment of the customer's service and in no event to exceed one-half of the amount of the charges for exchange service involved during the period covered by the directory, and where in cases of charged directory listing the liability is limited to an amount not exceeding the amount of charges for the charged listing or listings involved during the period covered by the directory, p. 191.

Service, § 46 — Jurisdiction of Commission — Managerial matters — Regulation as to liability.

3. Provisions of a regulation of a telephone company and a contract stipulation required of persons applying for directory service limiting the liability of the company for errors or omissions come within the scope of management and when fair and reasonable should not be disturbed by the Department as a regulatory body, p. 191.

[June 26, 1941.]

PETITION *by telephone subscriber relating to general regulation and contract stipulation in connection with limited liability for errors in listing; dismissed.*

APPEARANCES: John M. Capron, for the petitioner; T. Baxter Milne, for New England Telephone & Telegraph Company.

By the DEPARTMENT: The petitioner complains that he was improperly listed by the New England Telephone & Telegraph Company in its classified directory in the issue of November, 1940, and in effect requests

that No. IX of the General Regulations of the company (D.P.U. No. 6) be supplemented by the addition of a clause providing that the regulation shall not be construed so as to limit the liability of the company to a subscriber who shows special damage by reason of error or omission in the directory listings, whether in the section arranged alphabetically or in the classified section.

General Regulation IX (D.P.U. No. 6) is as follows:

"IX. *Liability Due to Directory Errors and Omissions*

"A. The Telephone Company's liability arising from errors or omissions in directory listings (other than charged listings) shall be limited to the amount of actual impairment of the customer's service and in no event shall exceed one-half the amount of the charges for the exchange service involved during the period covered by the directory in which the error or omission occurs.

"B. In cases of charged directory listings, the liability of the telephone company shall be limited to an amount not exceeding the amount of charges for the charged listing or listings involved during the period covered by the directory in which the error or omission occurs."

In the November, 1940, issue of the directory of the New England Telephone & Telegraph Company the petitioner was listed in the alphabetical section as "Rosendorn Louis oil burners 94 Wash CAPitol 5892." In the classified section of the directory the petitioner was listed on page 329 under the general heading "OIL" and under the classification "Oil Burners," in the following manner:

ROSENDORN LOUIS
24-HOUR SERVICE
ON ALL MAKES OF OIL BURNERS
94 Washington CAPitol 5892
Night Sundays Holidays
LEXington 1148

It was represented to us at the hearing that the petitioner has during part of his time over the past seven years built up a business of selling and repairing oil burners which business he has carried on under the name and style of "Silent Glow Sales & Service Company" and that he has derived a substantial part of his income from the enterprise. He contends that the effect of the failure or refusal of the company to list his business in the name and style under which he has carried it on was so detrimental that it became necessary for him to close his Boston office although he still does business in Lexington, in the telephone directory of which town he admits he is satisfactorily listed. When the petitioner applied for listing in the directory he signed an application to the company which provided as follows:

"The undersigned agrees that the company shall not be liable for errors or omissions (including total omissions) in such directory service beyond the amount paid for the item or items in which errors or omissions occur for the issue life of the directory involved."

No evidence was offered which showed whether the closing of the Boston place of business of the petitioner was in fact due, in whole or in part, to the allegedly improper listing in the classified directory or to other causes or the extent of the special dam-

age alleged to have been sustained by the petitioner. The petitioner, in our opinion, rightly concedes that the determination whether a cause of action exists is not for us to decide, but he does contend that by requiring an applicant for directory service to sign the form of commitment above referred to the company is indulging in an unfair practice and that the provisions of Clause B of General Regulation IX limiting the liability of the company for errors or omissions in the classified directory, for which a charge is made, are unjust and unreasonable.

[1] By a provision of General Laws (Ter. Ed.) Chap 159, § 12 the Department is given general supervision and regulation of, and jurisdiction and control over, services furnished or rendered for public use within the commonwealth by common carriers including those engaged in the transmission of intelligence by electricity, by means of telephone lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment appertaining thereto, or utilized in connection therewith. (See Clause D of said § 12.) The language of the statute confers very broad powers on the Department, we think, broad enough to include regulatory jurisdiction over the telephone directory including the classified section. See Service Subscribers v. New York Teleph. Co. (NY 1937) Case No. 9118, 20 PUR(NS) 223. As broad as the power vested in the Department is, however, it must be exercised with due regard for the rights of company management which is intrusted with the responsibility of carrying on the business of the company efficiently and reasonably profitably but with due regard also for the rights of the public whose interests it is the Department's duty to safeguard. To some extent of course the right of public utility management may be affected and curtailed by a regulatory body, "Nevertheless their (public utility companies) property cannot be taken without compensation, nor their right of management be unreasonably curtailed under the guise of supervision, regulation, and control." New England Teleph. & Teleg. Co. v. Department of Public Utilities, 262 Mass. 137, 146, PUR1928B 396, 159 NE 743, 56 ALR 784.

[2, 3] Manifestly there is no sharp line of demarcation separating the realm of management from that of regulation, no definite point indicating where management ends and regulation begins. The two are to be reconciled by application of the rule of sound reason and fair dealing.

It is in this light that the question under consideration is to be determined.

The provisions of paragraphs A and B of General Regulation IX and the contract stipulation required of persons applying for directory service limiting the liability of the telephone company for errors or omissions are, in our opinion, fair and reasonable conditions or prerequisites to the furnishing of directory service in the telephone directory. They come within the scope of management and being fair and reasonable should not be disturbed by this Department as a regulatory body.

In the case of Hamilton Employment Service v. New York Teleph. Co. (1930) 253 NY 468 471, 171

NE 710 (a decision in which the late Mr. Justice Cardozo, then Chief Justice, participated) a judgment in favor of the company was sustained by the court of appeals where it appeared that the following regulation, very much resembling the regulation under consideration, was a condition of directory service: "No liability for damages arising from errors or omissions in making up or printing of its directories shall attach to the company, except in the case of charge listings, in connection with which its liability shall be limited to a refund at the monthly rate for each listing for the time an error or omission continues after reasonable notice in writing to the company."

In connection with that regulation the court said. "Unless this condition is reasonable, it is not binding upon plaintiff. The preparation and delivery of a directory is not a primary part of the business of a telephone company. It is wholly subordinate to the main transaction of transmitting messages. A directory may be compared to a railroad timetable. Courts do not hold a carrier to the same degree of liability for mistakes in timetables as for negligence in operation of trains. The principle of Weld v. Postal Teleg.-Cable Co. ([1910] 199 NY 88, 98, 92 NE 415) seems to support the proposition that the regulation at bar in so far as it does not seek immunity from gross negligence or wilful misconduct, is reasonable. While holding that a telegraph company is without power to limit its liability for gross negligence or wilful misconduct, this court citing many precedents has gone on record to the effect that those who are not insurers 'have the power to limit their liability in cases where mistakes occur through no fault on their part, or for such mistakes of their employees as will occur through ordinary negligence in spite of the most stringent regulations or the most vigilant general oversight.' "

It is obvious that in the preparation of a telephone directory containing many thousands of names and listings, errors, and omissions will occur notwithstanding the greatest of care. Questions are bound to arise, also, such as whether certain applicants have the right to use particular tradenames, trademarks, or descriptions. It is only just, therefore, that the company should be permitted to limit its liability reasonably in such cases and in cases of ordinary errors or omissions. The general regulations and the contract stipulation do not by their terms purport to limit the company's liability for gross negligence or wilful misconduct. To preclude the company from limiting its liability for ordinary mistakes in the directory would be to encourage and invite litigation which might well become so costly to the company as to affect rates adversely to the public interest.

All these considerations lead us to the conclusion that we have reached, therefore, after public hearing, of which due notice was given, and consideration, it is

Ordered: That the petition of Louis Rosendorn of Lexington relating to a general regulation and contract stipulation in connection with listings in the classified directory of the New England Telephone and Telegraph Company be and hereby is denied. Petition dismissed.

et's Keep America's Trucks ROLLING!

't's a Big Job—with SERVICE of FIRST Importance!

hroughout the nation's defense effort, e great civilian army of trucks will ry an *emergency load* totaling *extra* illions of tons. Trucks will work rder—and live longer. There will be ss rest between hauls, fewer empty turns, more double duty. New standds of endurance are being set up—*and at means new emphasis on SERVICE.*

ternational Harvester, equipped with nationwide network of 248 Company-ned branches scattered strategically side the highways of America, accepts e challenge. Keenly aware of its reonsibility to owners, International has voted extraordinary effort to raising the service standard of its branches and dealers to a new peak of efficiency.

It is Harvester's pledge that its branches shall be "Service Bases" essential to the cause of National Defense. It pledges further that the service station of each International Truck dealer shall be known as safe harbor to any truck, whether the call is for preventive maintenance, minor repair, or major overhaul. For International Trucks, Harvester pledges that as Defense comes FIRST, *so shall SERVICE for trucks!*

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Ave. Chicago, Illinois

INTERNATIONAL TRUCKS

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.

New Jersey Utility Increases Generating Capacity

A 50,000 kilowatt high-pressure turbine-generator was put in service recently at the Marion Station of Public Service Electric and Gas Company. The unit increases the capacity of the company's electric system to 887,700 kilowatts.

A low-pressure generator of 50,000 kilowatt capacity is being installed at Marion to operate in conjunction with the high-pressure unit. It is expected that the low-pressure machine will be ready for service in the fall of 1942. By that time Marion will have increased its capacity to an extent equal to the 100,000 kilowatts put in operation at the company's Burlington station last November.

Another 100,000 kilowatt unit is under construction at the Burlington generating station. When that is completed in the winter of 1942, the generating capacity of Burlington will be 255,000 kilowatts, and the total capacity of the Public Service system will be 1,037,700 kilowatts.

By the winter of 1942 the company will have increased the capacity of its electric system since 1937 by 350,000 kilowatts, or approximately 51 per cent.

In addition to the increased generating capacity, Public Service has interconnections with neighboring companies.

Utilities Promote Fluorescent

UTILITY merchandising officials are giving renewed attention to fluorescent lighting as a possible answer to the threatened curtailment of power for domestic lighting use due to the defense program. At least 59 utilities are actively engaged in developing the sales of this lighting device, according to a recent report. One of the features of fluorescent lamps is the relatively low power needed for a specified amount of light compared with incandescent lamps.

Manufacturers, including divisions of General Electric, Westinghouse Electric and Hygrade Slyvania, are turning to the use of plastics as substitutes for materials absorbed by the defense program and production of the new type lamps is believed to face no curtailment. In fact, trade estimates are being made that by the fall sales will run about 150 per cent ahead of the preceding year. By 1945 total output may reach 115,000,000 units, it is estimated, compared with an estimated 20,000,000 this year.

Consolidated Edison Launches Fifth Appliance Campaign

THE Consolidated Edison System companies recently launched their fifth electrical appliance campaign.

The four-month campaign recently completed maintained the mark set by the three predecessor appliance bargain drives, all of which surpassed all previous national appliance sales records.

The new promotion, which will be backed by newspaper and radio advertising, bill enclosures and the usual display material, will also have the active selling support of the Consolidated Edison System companies' sales employees. Once again, also, field demonstrations will be given by means of the TruVue stereoscope and film.

The appliances included in the campaign are a Eureka de Luxe tank-type vacuum cleaner with a certified regular retail value of $49.95, which will be sold only to the system companies' customers for $22.90 cash (plus New York city sales tax of 46c where effective) or $2 down and $2 a month for eleven months (including sales tax and all time payment charges) and a $12.50 Schick Flyer shaver, which can be bought by those who buy the cleaner for $1, including 2 per cent New York city sales tax.

Manufacturers' Notes

Westinghouse at Peak

G. H. Bucher, president of Westinghouse Electric & Manufacturing Co., reported recently that more than half of the company's productive facilities is now devoted to defense, while unfilled defense orders of over $200,000,000 constitute close to 60 per cent of the total backlog. On June 30, 1941, total unfilled orders amounted to $341,265,794, an increase of 295 per cent over the $86,386,749 a year ago.

Manufacturers' Notes (Cont'd)

Westinghouse employment has been increased to the highest level in the history of the company. More than 71,000 people are now on the rolls. More than 20,000 additional employees have been added since last summer—an increase of more than 35 per cent.

Kellogg Appointment

F. G. Gardner has been promoted to acting chief engineer of the Kellogg Switchboard and Supply Company, Chicago, according to a recent announcement by President M. K. McGrath.

George R. Eaton, vice president in charge of engineering, is on leave of absence because of ill health.

After serving as chief engineer for Electrical Research Products, Inc., in London, Mr. Gardner spent three years in Africa, from 1930 to 1933, with International Standard Electric Corp. He also worked with International Tel. & Tel. Corp. on communication projects in Russia, Italy, Argentina and Australia.

Erlicher Named on New OPM Committee

Harry L. Erlicher, vice president of the General Electric Company and also in charge of that company's purchasing activities, has been named a member of the Defense Industries Advisory Committee of the Copper and Zinc Industries, a division of the Office of Production Management. The appointment was announced by Sidney J. Weinberg, chief of the Bureau of Defense Industry Advisory Committees.

Remington Rand Curtails

Remington Rand, Inc., will discontinue the manufacture of metal office furniture, some steel filing cabinets and smaller typewriters, especially student models, to conserve raw materials for defense, President James H. Rand, Jr., announced recently.

The company has a backlog of orders of more than $11 million, including more than $5,000,000 for defense materials.

Kellogg Promotes Bond Sales

To encourage its employees to invest in United States Defense Savings Bonds, the Kellogg Switchboard & Supply Company, Chicago, recently announced it would appropriate from its own funds $1.00 per employee who opens a Defense Savings Bond account with the company.

Home Cooling and Heating Unit

A year-round gas operated domestic air conditioner, providing heating in the winter and cooling in the summer, is announced by Servel, Inc., Evansville, Ind.

The year-round conditioner, according to the manufacturer, is so flexible that it can heat or cool in the same day to meet sudden weather changes. Credit for this versatility goes to the Servel Selectrol, a combination thermostat and unified control system, which by the flick of a switch automatically changes the unit from heating to cooling or vice versa. Even the circulating fan may be operated independently, if desired, from the Selectrol.

The conditioner performs six major functions: effective cooling, positive dehumidification, efficient heating, controlled humidification, selective air circulation and thorough air cleaning.

Floor space requirements for the new unit are less than requirements for a conventional house furnace and by far takes much less space than separate heating and air conditioning units. Extra floor space for storing fuel is not required as gas is piped into the home direct to the Servel conditioner thus giving added area for basement playroom or more space in the utility room.

Dorex Adsorbers Aid Phone Equipment

In order to combat the adverse effect of common air-borne gases upon the proper functioning of automatic telephone equipment, Dorex Adsorbers, manufactured by the Dorex division of the W. B. Connor Engineering Corp., are being installed in a local automatic Bell telephone exchange.

Lewis Appointed to Defense Committee

H. Edgar Lewis, chairman of the board and president of the Jones & Laughlin Steel Corp., Pittsburgh, has been added to the Steel Defense Advisory Committee, according to an announcement by The Bureau of Clearance of Defense Industry Advisory Committees, Office of Production Management.

Ford Promotes Two

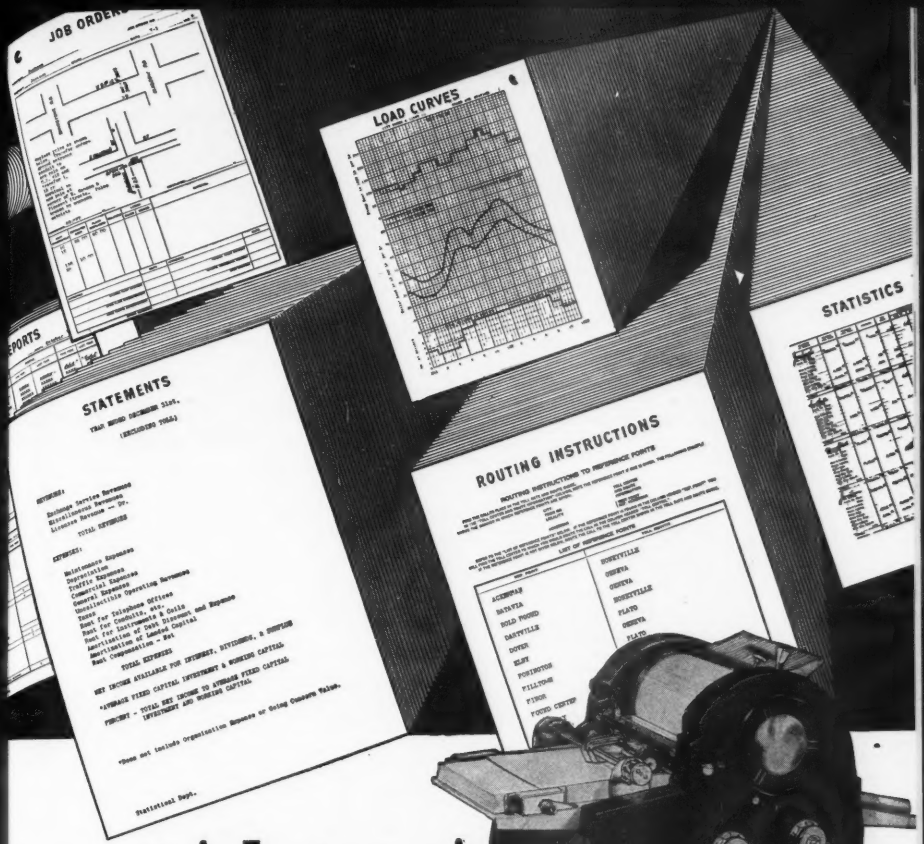
Charles E. Sorenson and A. M. Wibel have been elected vice presidents and directors of Ford Motor Company, Detroit.

Axaloy for Axle Shafts

A new steel Axaloy, which surpasses in strength, hardness and toughness the nickel alloy materials formerly used for axle shafts and gears, is ready for production by the Timken-Detroit Axle Co., after more than two years of experimental work and testing, according to a recent announcement.

Introduction of Timken Axaloy steel will have an important bearing on defense production, in that it relieves the demand for nickel, formerly believed essential in steel alloys suitable for axle parts.

Both laboratory and road tests have shown that the new series of Timken Axaloy steels



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IS *YOU* MULTIPLIED MANY TIMES!

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Manufacturers' Notes (Cont'd)

show a combination of hardness, strength and toughness unequalled in the higher grades of alloy steels. Performances heretofore believed impossible are being recorded daily in experimental tests and actual service. Axaloy is already being used in Timken axle shafts and final gears, and will be applied to other axle parts as rapidly as production permits.

Equipment Literature

How to Apply Flow Meters Profitably

Originating as a flow meter catalog describing the Cochrane Corporation line of flow meters, "Flow Meters by Cochrane" has grown to a 52-page handbook of instrument application to steam; water; air; gas; and viscous,

volatile, and corrosive fluid measurement. Considerable space is devoted to the importance of flow records in the efficient operation of boiler and turbine rooms and various process departments.

Special sections are devoted to control applications, dual range recorders, detached instruments, and summation meters. A list of available charts, with tabulated descriptions of each, is included as a guide to Cochrane meter users. For a copy of this new Flow Meter book, write Cochrane Corporation, 17th Street and Allegheny Avenue, Philadelphia, Pa., for Publ. 3010.

How to Get Along With Less Priority Metal

"How to Get Along With Less Priority Metal" is the timely and important theme of Metco News issued by Metallizing Engineering Co., Inc., Long Island City, New York. This 16-page book shows how it can be done with the metal spraying process—especially in the production and maintenance of rotating and reciprocating mechanisms. Unusual savings, not only in metal but in time and money as well, are described and illustrated.

Master-Lights

"Emergency Lighting" is the subject of a new illustrated catalog (Bulletin No. 141) issued by the Carpenter Manufacturing Co., 179 Sidney St., Cambridge, Mass.

Particular attention is devoted to Master-Lights for diaster, flood, riot and fire. Descriptions also are given of Master-Lights for every day use, both indoor and outdoor.

Hygrade Sylvania Annual Report

The 13th annual report of the Hygrade Sylvania Corp., Salem, Mass., departs from the usual stereotype form of yearly financial review.

Written for the employee, as well as stockholder, the report contains facts about the company's product and their manufacture which is of interest to customers and prospects.

The report is made inviting and easy to read by the use of wide margins, subheads, animated drawings, and illustrations of products and their use.

Engineering Services

A brochure announcing the engineering services offered to public utility companies and other industries has been issued by E. J. Cheney and Co., 61 Broadway, New York City.

One of the important services the Cheney organization, which has been serving the utilities since 1920, is prepared to render to meet the demand for increased output, is Rehabilitation Engineering—to restore and modernize unused equipment for efficient service.

ASA Wood Pole Specifications

The publication of six American Standards covering specifications for wood poles is announced by the American Standards Association. These standards, of especial interest to the builders and operators of overhead electric, power and communication lines, were prepared under the sponsorship of the ASA Telephone Group which is made up of the Bell Telephone System and the U. S. Independent Telephone Association. They represent a consistent system of standards for the six major pole timbers of the United States—northern white cedar poles, western red cedar poles, chestnut poles, southern pine poles, lodgepole pine poles, and Douglas fir poles.

The wood pole standards have been in use for several years as tentative standards and have already been universally recognized as a satisfactory basis for the selection of poles.

Copies of the new edition of these standards may be ordered from the American Standards Association at 20 cents a copy. They are as follows: American Standard Specifications

***Equipment Literature** (Cont'd.)*
and Dimensions for: Northern White Cedar Poles—05.1—1941; Western Red Cedar Poles—05.2—1941; Chestnut Poles—05.3—1941; Southern Pine Poles—05.4—1941; Lodgepole Pine Poles—05.5—1941; Douglas Fir Poles—05.6—1941.

New Products

Egry Allset Forms

Among the numerous types of forms produced by The Egry Register Company the Egry Allset has proved very popular for many form writing requirements. Allset, as the name indicates, is a unit form, with all copies combined into a set, fastened at the margin, on either side, or top or bottom, depending on its use.

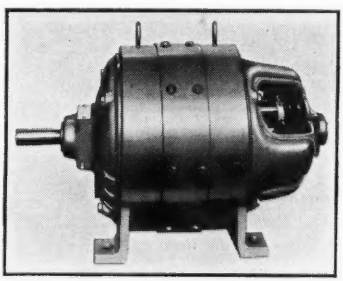
Allsets are particularly desireable for all forms that cannot be completed at one writing, and where copies must be kept intact through several departments. All copies in the set are, held in perfect alignment at all times, and when the form is completed, the written copies are easily separated from the stub, which carries the carbon.

Allset forms are adaptable for either typewritten or manually written records. When handwritten, a metal Allset holder is used. It provides a convenient writing table and at the same time protects the unused forms.

Allset forms are available in many sizes and in as many copies as may be required; in offset or letterpress printing and in several colors of ink and paper. Literature will be sent on request to the manufacturer.

Regulator-Exciter Unit

Efficient quick-response regulation for automatically holding constant output on DC and



"Regulex" Exciter

AC machines is available with the new "Regulex" exciter developed by the Allis-Chalmers Manuafacturing Company. This rotating regulator reduces the first cost of a generator or motor installation because exciter and regulator are combined in one unit. The Regulex consists of a differential amplifier for controling the excitation on DC motors and generators to give constant voltage, current, speed or tension.

The Regulex was originally developed for steel mill use, principally for giving constant tension on winding and unwinding coils. It is now being applied to other steel mill drives and mine hoists.

"Regulex" excitors are being developed for all sizes of DC machines, and they are applicable to AC synchronous motors, generators and condensers. They will also be applicable to constant tension drives in paper mills.

Bill Receipting and Check Writing Machine

A desk model machine released by Burroughs brings increased protection, speed, and economy to bill receipting and check writing and signing, according to the manufacturer.

The operator merely slides the check or receipt into the chute, indexes the amount on

Burroughs Receipting and Check Writing Machine in Use.

the keyboard, and depresses the motor bar, the machine automatically writing the date or consecutive number, safeguarding the amount, accumulating the amount in a locked-in total, and signing the form with an authorized signature.

Both the signature die and the accumulated total figures are under lock and key, and the machine itself can be completely locked to prevent its use by an unauthorized person.

For further information, write to Mechanical Methods Division, Burroughs Adding Machine Company, Detroit, Michigan.

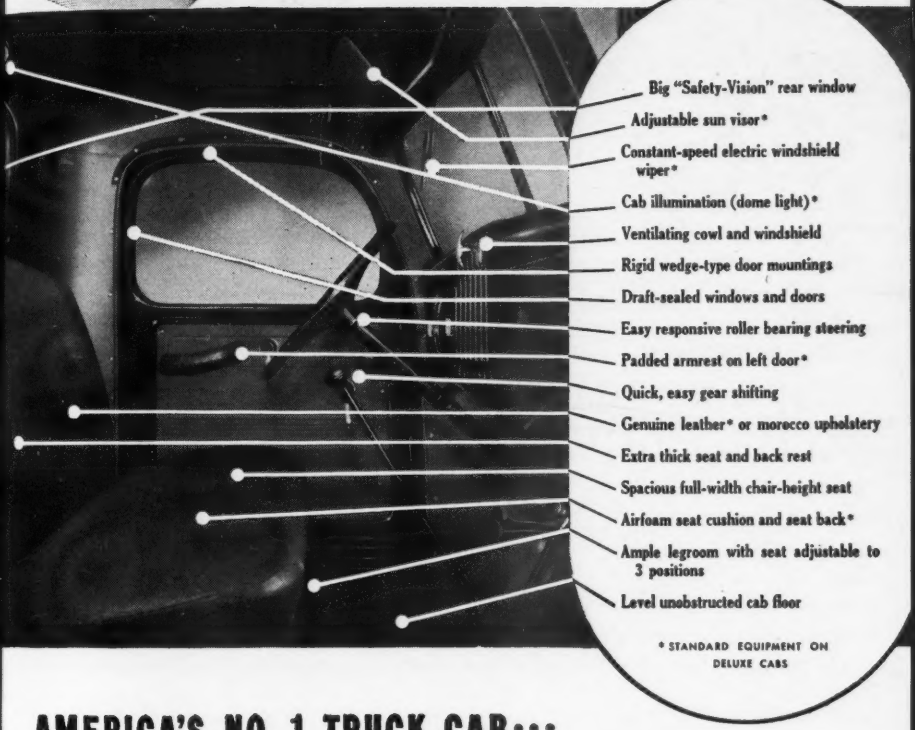
Klemp Welded Steel Grating

A one-piece construction welded steel grating for boiler-rooms, trench-covers, platforms, fire escapes, stair treads, etc., is announced by the Wm. F. Klemp Co., Chicago.

The grating is made in all widths and lengths to suit requirements. The arrangement of the hex. rods provides a non-slipping surface and there are no sharp corners to collect oil or dirt. The grating is practically self-cleaning, easily maintained and allows for maximum passage of light and air.

TRUCK DRIVERS EVERYWHERE AGREE!

New Dodge Truck Cabs Make Their Job Easier



AMERICA'S NO. 1 TRUCK CAB•••

another reason why Dodge Job-Rated Trucks are better

The quality of a Dodge *Job-Rated* truck is typical of the quality of the entire truck. For proof, examine a Dodge truck from stem to stern. But look at other trucks, too! Be impartial . . . but be inquisitive . . . and fair.

Conduct your comparison completely: Include the engine—its power and economy; check the quality of the clutch, transmission, rear axle, brakes, springs, and frame!

All these features must be top quality and sized to handle *your* hauling job.

They are in Dodge *Job-Rated* trucks . . . trucks that are sized and built throughout to *fit the job* . . . to cut your hauling costs! See your Dodge dealer *now* for a good "deal" . . . liberal trade-in allowance . . . easy budget terms.

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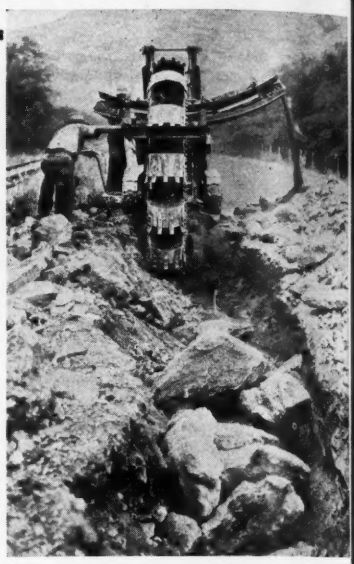
DEPEND ON DODGE *Job-Rated* TRUCKS

J-R-T MEANS A TRUCK THAT FITS YOUR JOB



The Complete Answer

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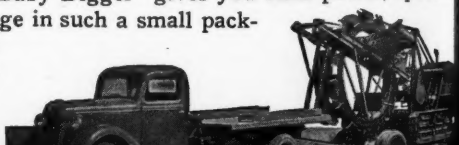
THE CLEVELAND "BABY DIGGER"

MODEL "95"

Equally Efficient for Long Line Trench or City Distribution

Literally thousands of miles of completed work have proven the correctness of t "Baby Digger" design. The forerunner of all full-crawler trench excavators, t "Baby Digger" stands supreme as a compact, light weight, easily transport trencher. With it you have the best chance to machine dig your work. Compa fast, flexible, powerful and with all dead weight eliminated, the "Baby Digger" e actly meets conditions, whether it's a cross-country transmission line or a short s vice extension in the city.

Easy to operate and transport and with the built-in qualifications to resist wear a abuse, the "Baby Digger" represents the utmost in economy and efficiency and assu maximum machine usage. Only the "Baby Digger" gives you such power, speed a strength and such a wide digging range in such a small package. Write today for complete details on this modern most usable "Cleveland."



A big time-saving "Cleveland" feature — Truck speed transportation on special trailers.

THE CLEVELAND TRENCHER C

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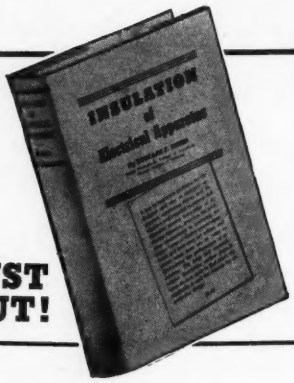
Now... *the complete, one-volume key to the engineering essentials of*

INSULATION

—kinds, applications, testing, theory



JUST OUT!

HERE is a new and helpful guide for all concerned with the design and use of electrical apparatus—a book that covers all aspects of its insulation—concisely reviews the theory—describes and compares the materials—and gives complete details of the insulation problems present in all types of electrical apparatus and how they are solved.

INSULATION OF ELECTRICAL APPARATUS

By Douglas F. Miner

George Westinghouse Professor of Engineering
Carnegie Institute of Technology

450 pages, 6 x 9, 306 illustrations, $5.00

This book bridges the gap between the more theoretical treatments of dielectric phenomena and the needs of engineers and designers for data on present-day insulation practices.

From it the reader can get everything necessary to an intelligent approach to insulation problems—a correlation of the theoretical and the practical—plus many facts and data to help in design or selection of electrical apparatus.

The section on applications is presented in great detail—covers many specific types of apparatus, breaking each one down to show every insulation requirement and best practices in handling it.

This book will help

DESIGNERS of electrical equipment

ENGINEERS in mechanical, chemical, or other fields who need to know something about insulation of electrical apparatus

MAINTENANCE and REPAIR MEN who want to know more of the reasons back of their work

PURCHASERS of electrical equipment who need to know how to detect quality or lack of it and what to put into specifications

18 full, explicit, authoritative chapters cover:

1. Dielectric Phenomena
2. Theories of Dielectric Behavior
3. Factors Affecting Dielectric Behavior
4. Insulating Materials
5. Industrial Motors and Generators
6. Large Rotating Machines
7. Control Apparatus
8. Transformers and Reactors
9. Circuit-breaker Principles
10. Circuit-breaker Constructions
11. Transmission-line Insulators
12. Lightning Arresters
13. Capacitors
14. Heating Appliances
15. Lamps and Tubes
16. Meters, Instruments, and Relays
17. Insulating Testing
18. High-voltage Testing Equipment

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Please send me a copy of Miner's INSULATION OF ELECTRICAL APPARATUS postpaid. I enclose $5.00 in check..... money order..... cash.....

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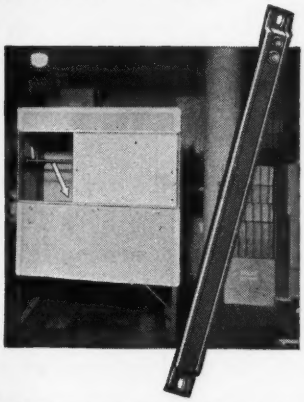
...dustry needs MORE ELECTRIC HEAT
...speed up the Defense Program . . .

...re our power
...ill went up
...bit

...ut look what those **CHROMALOX**

ELECTRIC HEATING UNITS *did for our production!"*



THEY PUT THIS TEMPERING OVEN ON WHEELS—WITH "WIRED HEAT"

The product required slow cooling to avoid distortion. This oven heated by easily applied Chromalox Strip Heaters, can be shifted about as need requires, and plugged into the nearest electrical outlet. An inexpensive thermostat holds the temperature at 125 deg., assuring perfectly formed product.

Industry is hungry for new production ideas—particularly if they can be applied quickly and easily. It's your chance to build load with electric heat.

Take the shop that wants to expand, but has limited boiler capacity . . . Or requires closest temperature control of process heat, to insure uniformity of product . . . Or wishes to install a new, better plastic molding process requiring higher temperature than their present heating method will supply . . . Or desires simply to relocate some department using heat, to streamline their production . . . Chromalox electric heating units are the simple answer to all these and many more situations, and Chromalox engineers will cooperate with you in developing this valuable function of electric power among your industrial customers.

Available in units of all required types for any industrial heating need to 1000 deg. F. Fully described in the Chromalox Book of Electric Heat, on request.

EDWIN L. WIEGAND COMPANY
7500 THOMAS BLVD. • PITTSBURGH, PA.

CHROMALOX
The load builder

MERCOID = APPLIED DEFENSE ★ IN INDUSTRY ★

MERCOID LIQUID LEVEL CONTROLS

For further information write for Mercoid Catalog showing the complete line.

These are days when American Industry is confronted with many problems and responsibilities.

The task of building up an adequate National Defense as quickly as possible and at the same time, take care of the Nation's normal requirements, is a job of major proportions, calling for an all out efficiency performance of men and mechanical equipment. • Wherever the control of temperature, pressure, liquid level or mechanical operations are involved, Mercoid Controls and Switches assure a maximum in efficient and dependable performance. Illustrated herewith are two items, among many in popular use. • While Mercoid Controls are recognized as standard instruments in various automatic heating fields, they are also a favorite among leading engineers who are increasingly using them on vital applications in the protection and conservation of costly industrial equipment.

THE MERCOID CORPORATION
4233 Belmont Avenue • Chicago, Illinois

Mercoid hermetically sealed mercury switches used exclusively in all Mercoid Controls. They save on service expense as there is infinitely less chance for contact trouble. Longer control life assured.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction.

PROFESSIONAL DIRECTORY (*continued*)

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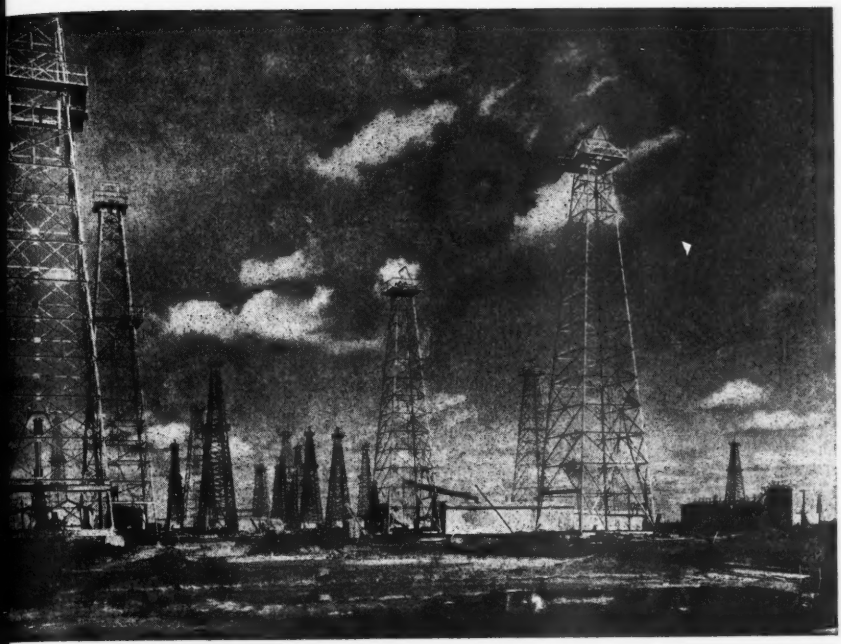
[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

*Fortnightly advertisers not in this issue.



NATIONAL DEFENSE NEEDS MORE THAN "ELBOW GREASE!"

Industrial lubrication, as exemplified by the role of Cities Service, plays a vital part

Lifeblood of the factory line is the precious oil that keeps the wheels of industry turning . . . spinning ever faster and faster as tanks, ships, planes and trucks spring from blueprints into cold steel.

In many phases of national defense, Cities Service's industrial oils have been called upon to help deliver maximum efficiency of operation.

We are honored by our selection, feeling that it indicates more plainly than words that we are qualified to meet the lubrication problems of industry. The vast experience of our Lubrication Engineers is available for consultation without cost. All you have to do is get in touch with us at any of the offices listed below.

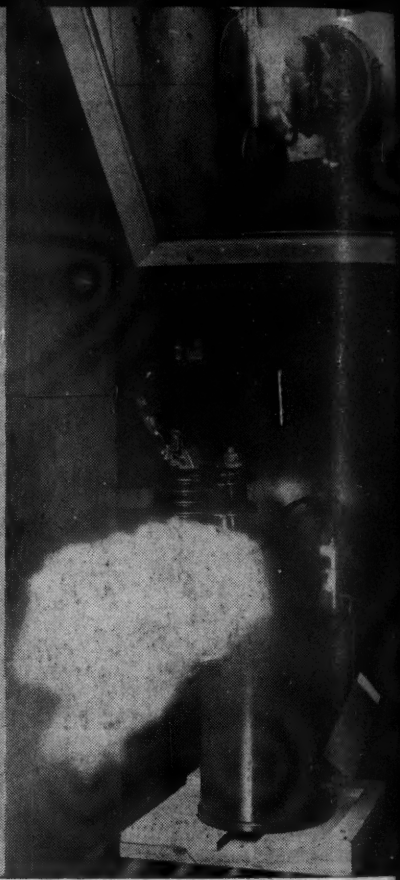
CITIES SERVICE OIL COMPANIES

CITIES SERVICE OIL COMPANY — Chicago, New York, Cedar Rapids, Boston, St. Paul, Grand Forks, Kansas City, Fort Worth, Oklahoma City, Milwaukee, Cleveland, Detroit, Syracuse.

CITIES SERVICE OIL COMPANY, LTD. — Toronto, Ontario.

ARKANSAS FUEL OIL COMPANY — Shreveport, Little Rock, Jackson, Miss., Birmingham, Atlanta, Charlotte, N. C., Nashville, Richmond, Miami.

Lightning test



ARTIFICIAL lighting becomes a shop tool at Westinghouse for pre-testing every CSP transformer before shipment. Tests like this account for the high reliability of Westinghouse transformers in the field. Similar production-line checks on arresters, meters, insulators and other Westinghouse distribution equipment assure you of minimum line maintenance . . . and help to eliminate costly service interruptions.

Westinghouse activities in research, in the manufacture, distribution and application of apparatus, and in promoting the use of electricity, result in better service to you and a wider use of electricity by your customers. They have been made possible and are continually encouraged by your purchases of Westinghouse apparatus.

WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, EAST PITTSBURGH, PA.

Westinghouse

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